

CASE NO.:
Writ Petition (civil) 737 of 1995

PETITIONER:
BHANWAROO KHAN & ORS.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 02/04/2002

BENCH:
Doraiswamy Raju & Ashok Bhan

JUDGMENT:

With
C.A. No. 10224 of 1995

J U D G M E N T

Bhan, J.

This judgment shall dispose of Civil Appeal No. 10224 of 1995 directed against the Division Bench Judgment of the Rajasthan High Court arising from Civil Writ Petition No. 837 of 1987 decided on 17th May, 1994 and Writ Petition (C) No. 737 of 1995 filed in this Court challenging the order made by the Government of India (Annexure D in the writ petition) dated 21st July, 1995 determining the national status of the petitioners under Section 9 (2) of the Citizenship Act, 1955 (for Short "the Act").

The parties would be referred by their original status in the appeal as Appellant Nos. 1 and 2 (who are the writ petitioners Nos. 1 and 2) and the respondent as the Government of India.

The appellant No. 1, Bhanwaroo Khan and the appellant No. 2 - wife of the appellant No. 1, are said to be residents of Village Hammoosar, Tehsil Ratangarh, in the State of Rajasthan and at present residing at Sardar Sahar, District Churu, Rajasthan. They had left India after partition of the country and became citizens of Pakistan. After obtaining passports from the Pakistan as nationals/citizens of Pakistan and after obtaining visas from Indian High Commission in the year 1955, the appellants entered India via Atari Check Post, Border of Punjab on 12th February, 1955. According to the procedure a foreigner coming from Pakistan is required to attend the office of the Registration authority of the District in which they have to stay. The appellants reported to the District Superintendent of Police, Churu on 14th February, 1955 about their arrival to India and an entry was made in the Register of Foreigners visit on Serial No. 31. The appellants thereafter reported at the Police Station, Ratangarh on the same day. Again on 7th May, 1955 the appellants attended the Police Station, Ratangarh and informed that they were leaving India for Pakistan by night train and accordingly an entry was made in the Register at Serial No. 6.

Instead of returning back to Pakistan the appellants kept themselves underground. In 1984 a Pakistani national was arrested at Sardarsahar. Being afraid of arrest and after consultation the appellants applied to the State Government for registration as citizens of India. On this, Home Department sent a message No. F.1(4) Home/Gr.IV/84 dated 13.3.1984 (Annexure R-6) to the Superintendent of Police, Churu, State of Rajasthan, mentioning that Bhanwroo Khan was a national of Pakistan. At that time no case was pending with the Superintendent of Police, Churu. Superintendent of Police, Churu by his wireless message dated 15th March, 1984 gave his reply. On the receipt of the reply, the Home Department demanded a detailed note in the matter. On receipt of instructions S.H.O. Police Station Ratangarh and Sardarsahar conducted a detailed enquiry, report of which was sent to the Home Department through Superintendent of Police, Churu. On receipt of the enquiry report the Home Department wrote to the Superintendent of Police, Churu to keep a close watch on the appellants till decision is taken by the Government. Superintendent of Police, Churu on 29th January, 1987 issued notices and sent to S.H.O. Police Station Sardarsahar for service. The service of these notices were effected on 22nd February, 1987. Immediately after the service of notices by the Superintendent of Police, Churu the appellants filed the Writ Petition No. 837 of 1987 dated 10th July, 1987 in the High Court of Rajasthan alleging therein that they had acquired the citizenship of India and they were being unnecessarily harassed by the Police. The two prayers made by the appellants in the writ petition were as follows:

"(a) by an appropriate, writ, direction or order the respondents may be prohibited from arresting and deporting the petitioners to Pakistan forcibly.

(b) the petitioners may be ordered to be treated as Indian citizens, or such relief which may be just and proper under the circumstances may be granted."

The writ petition was taken up for hearing by a Single Judge and dismissed. Aggrieved by the order of the Single Judge Civil Special Appeal No. 164 of 1992 was filed in the High Court along with an application under Section 5 of the Limitation Act to condone the delay of 98 days in filing the appeal.

The Division Bench condoned the delay of 98 days in filing the appeal. The appeal was dismissed by the impugned judgment dated 17th May, 1994. Civil Appeal is directed against this judgment.

On 16th September, 1994 on a representation made by the counsel for the appellants, this Court directed that the appellants would individually or collectively make an application before the authorities under the Citizenship Act and the concerned authorities would decide the same as soon as possible and the Court be communicated the result thereon. On 25th September, 1995 the Government of India placed on record the order dated 21st July, 1995 passed under Section 9 (2) of the Citizenship Act rejecting their claim to be Indian citizens. Thereafter, the appellants filed the Writ Petition No. 737 of 1995 challenging the order passed by the authorities under Section 9 (2) of the Citizenship Act.

Counsel for the appellants addressed arguments in the civil appeal as well as the writ petition simultaneously. According to him the facts were over-lapping and the point decided in the civil appeal would have a bearing on the result of the writ petition as well.

Counsel for the appellants contended that the appellants were born in India to Indian parents. Their brothers and sisters are living in

India. All their children were born in India and are living in India. That the appellants being more than 70 years of age required support in their old age from their children and they should not be deported from the country. Simply obtaining of passports from a foreign country is not sufficient to prove that the appellants had abandoned their natural citizenship of India. That the authorities erred in rejecting their applications under Section 9 (2) of the Citizenship Act.

Counsel appearing for the State of Rajasthan and the Union of India have refuted these submission and argued that the act of the appellants in migrating to Pakistan after partition of the country and obtaining passports from the Government of Pakistan declaring themselves to be citizens of Pakistan raises a presumption against the appellants that they are citizens of India. That the appellants obtained visas from Government of India after declaring themselves to be a citizens of Pakistan. Instead of returning back to Pakistan after the expiry of the visa period or getting the visa extended the appellants remained underground. On being detected they are liable to be deported to Pakistan. That a passport obtained by a person from a foreign country is relevant in an enquiry as to the citizenship of the person holding the passport. That a conclusive presumption could be raised that the appellants were the citizenship of Pakistan.

Counsel for the parties have been heard. Sub-section (2) of Section 9 of the Citizenship Act provides that if any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf. Rule 3 of Schedule III of the Citizenship Rules, 1956 (for short 'the Rules') provides:

"3. 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."

Relying upon this Rule the Union of India in its order passed under Section 9 (2) of the Citizenship Act dated 21st July, 1995 determined the national status of the appellants to be that of Pakistani.

A constitution Bench of this Court in *Izhar Ahmad Khan & Ors. Vs. Union of India & Ors.*, AIR 1962 SC 1052, considered the validity of Rule 3 of Schedule III of the Citizenship Rules and the order passed under Section 9 (2) of the Citizenship Act where the person concerned had obtained a Pakistan passport and observed in para 34 as under:

"In dealing with this question, it may also be relevant to consider the practical aspect of the rule; and that takes us to the procedure which has to be followed in Pakistan in obtaining a passport from the Government of that country for travel to India. One of the objects which the Act was incidentally intended to achieve was to meet the emergency which arose as a result of the partition of the country into India and Pakistan, and the relevant rules are also primarily applicable to Indian nationals who on going to Pakistan obtained passport from the Government of that country. Now; it is not disputed that according to the laws prevailing in Pakistan, a person is not entitled to apply for or obtain a passport unless he is a citizen of Pakistan under its Citizenship Act. Besides, the prescribed form of the application requires that the

applicant should make a declaration to the effect that he is a citizen of Pakistan and the said declaration has to be accepted by the Pakistan authorities before a passport is issued. In the course of the enquiry as to the citizenship of the applicant, declaration by officials of Pakistan about the truth of the statement of the applicant are also required to be filed. Thus, the procedure prescribed by the relevant Pakistan laws makes it abundantly clear that the application for the passport has to be made by a citizen of Pakistan, it has to contain a declaration to that effect and the truth of the declaration has to be established to the satisfaction of the Pakistan officials before a passport is granted. When a passport is obtained under these circumstances, so far as the Pakistan Government is concerned, there can be no doubt that it would be entitled to claim the applicant as its own citizen. The citizen would be estopped from claiming against the Pakistan Government that the statement made by him about his status was untrue. In such a case, if the impugned rule prescribes that the obtaining of a passport from the Pakistan Government by an Indian national, (which normally would be the result of the prescribed application voluntarily made by him) conclusively proves the voluntary acquisition of Pakistani citizenship, it would be difficult to hold that the rule is not a rule of evidence. In our opinion, it would be pedantic and wholly unrealistic to contend that the rule in question does not purport to assess the probative value of fact A in the matter of proving fact B but imports considerations which are relevant to substantive law. Our conclusion, therefore, is that the impugned rule is a rule of evidence and falls within the scope prescribed by S. 9 (2). The challenge to its validity on the ground that it is a rule of substantive law must therefore, fail."

The Supreme Court held that the conclusive presumption could be raised of the fact that a citizen of India who has obtained on any date a passport from the Government of another country of having voluntarily acquired the citizenship of that country before that date.

In the present case, the Government of India in its order dated 21st July, 1995 passed under Section 9 (2) of the Citizenship Act (which has been impugned in the writ petition) held:

". . . There is no dispute in this case that the applicants went to Pakistan and acquired the Pakistani passport voluntarily. They stayed there for three years which is not a short period. They obtained Pakistani passport after applying for it and after declaring themselves as Pakistani nationals. Further, the applicants have failed to adduce any documentary evidence to show that the Pakistani passport was obtained in fraud or under compelling circumstances, there may not be any hesitation whatsoever in declaring them Pakistani nationals.

NOW, THEREFORE the Central Government in exercise of the powers conferred on it under Section 9 (2) of the Citizenship Act,

1955 and Rules made thereunder and consideration of all the facts and circumstances of the case and relevant material on records, has come to a conclusion that the acquisition of a Pakistani passport and visa for visit to India by the applicants were voluntary acts and there was no compulsion on them. The applicants acquired the Pakistan citizenship voluntarily and therefore their claim to be Indian citizens deserves to be rejected and is hereby rejected."

We do not find any infirmity in the order dated 21st July, 1995 determining the national status of the appellants under Section 9 (2) of the Citizenship Act. Before us as well, the appellants failed to prove by any evidence whatsoever that they had not voluntarily migrated to Pakistan and had obtained the Pakistani passports under compelling circumstances. Rather their conduct after coming to India also shows that they had voluntarily migrated to Pakistan and obtained the passports from then Government of Pakistan after declaring themselves to be citizens of Pakistan. Soon after coming to India as per rules they got themselves registered with the concerned registration authority. On 7th May, 1955 on the expiry of the visa period they again went to the Police Station, Ratangarh and declared that they would be going back to Pakistan by the evening train. Instead of returning back to Pakistan they illegally stayed in India. Had the intention of the appellants been that they had not acquired the citizenship of Pakistan and the passport from that country voluntarily as has been projected before us then they would not have declared their intention of returning to Pakistan on the expiry of the visa period on 7th May, 1955. Further, they would not have gone underground. Efforts would have been made by them way back in the year 1955, to acquire the citizenship of India afresh. The order passed by the Union of India is factually correct and in accordance with law.

We agree with the High Court that a case for interference with the order of deportation is not made out. Long stay in the country and enrolment in the voters' list would not confer any right to an alien to continue to stay in the country. We do not find any infirmity either with the reasoning adopted or the conclusion arrived at by the High Court, or even by the Government of India in its order dated 21st July, 1995 passed under Section 9 (2) of the Citizenship Act, 1955.

After the conclusion of the cases, counsel for the appellants contended that the application of the appellants under Section 5 of the Citizenship Act is pending with the concerned authorities and the observations made in this case might prejudice the claim made by the appellants under Section 5 of the Citizenship Act. We have decided the civil appeal against the order passed by the High Court of Rajasthan arising from the civil writ petition filed by the appellants in the said Court and the claim made thereunder. Similarly, we have decided the writ petition filed in this Court directed against the order passed by the Government of India under Section 9 (2) of the Citizenship Act. No opinion on the merits or demerits of the application filed by the appellants under Section 5 of the Citizenship Act has been expressed. It would be open to the authorities to proceed and decide the application, if any, filed by the appellants under Section 5 of the Citizenship Act and decide the same (if not already decided) in accordance with law.

For the reasons stated above, we do not find any merit either in the appeal or in the writ petition and dismiss the same. The authorities are hereinafter put at liberty to act in accordance with law.

(Doraiswamy Raju)

.J.
(Ashok Bhan)

April 2, 2002

JUDIS