Isaque Mia Vs The Union of India (UOI) and Others

Second Appeal No. 59 of 1978

Court: Gauhati High Court

Date of Decision: Feb. 1, 1985

Acts Referred:
Citizenship Act, 1955 â€" Section 9(2)#Citizenship Rules, 2009 â€" Rule 30#Constitution of India, 1950 â€" Article 5#Foreigners Act, 1946 â€" Section 14#Illegal Migrants (Determination by Tribunals) Act, 1983 â€" Section 24, 3(1)

Citation: (1985) 2 GLR 367

Hon'ble Judges: B.L. Hansaria, J

Bench: Single Bench

Advocate: P. Choudhury, A. Bari and B. Banerjee, for the Appellant; P. Prasad, Government Advocate, for the Respondent

Judgement

B.L. Hansaria, J.
This appeal is against the judgment of reversal rendered by the learned Assistant District Judge No. 1, Gauhati by which

he held that the Plaintiff-Appellant had failed to establish the case of his being an Indian citizen, which he claimed to have acquired under Article

5(c) of the Constitution of India, as stated in para 3 of the plaint.

2. At one stage a preliminary objection was taken by the Respondents about the maintainability of the appeal in view of certain provisions in the

illegal Migrants (Determination by Tribunals) Act, 1983, The assistance of the learned Advocate General was, therefore, felt necessary, Learned

Advocate General accordingly appeared and submitted that on the facts of the present case the provisions of the aforesaid Act are not attracted

inasmuch as the expression ""illegal migrant"" as defined in Section 3(1)(c) of the Act covers only those persons who had entered into India on or

after 25th day of March, 1971. As in the present case the assertion of the Plaintiff is that he has been ordinarily residing in the territory of India,

that is "Bharat", ever since 1942, it is apparent that the Appellant cannot be an ""illegal migrant"" within the meaning of the aforesaid Act. In this view

of the matter, Section 24 of the Act, which required transfer of any suit or other legal proceeding relating to the question whether a person is or is

not an illegal migrant to the Tribunal set up under the Act, has no operation,

3. There being no bar in entertaining the appeal, the parties were heard on merits. To establish his case, the Plaintiff-Appellant examined, apart

from himself, two witnesses, they being" P.Ws. 1 and 2, who were believed by the learned trial Court. P.W. 1, who is a businessman of Athgaon,

has deposed that he met the Plaintiff at the time of the World War and asked him to-manage his business. Plaintiff was then aged around 11/12

years and stayed with him for about 8 years, whereafter he married and stayed for years more, and thereafter went to Lakhtokia and hired a house

and started his tyre business. P.W. 2, a contractor of Lakhtokia, "testified that be knew the Plaintiff from 1942-43 when the latter was working

with P.W. 1 with whom the Plaintiff stayed for about 8 years and afterwards started his own business in Lakhtokia which he had been doing. for

25/26 years by the time evidence was-given (1974) P.W. 3 is the Plaintiff himself and he laid his claim for Indian Citizenship on the above facts.

4. The learned Assistant District Judge, however, did not feel inclined to accept their evidence for the reason that though P.W. 1 stated in his

deposition that he bad met the Plaintiff during the Great World War, he did not know whether the Plaintiff had gone to Pakistan and had come

back to India 8 years ago (of his giving deposition in 1974) with a Pakistani Passport. This is not material for the case at hand inasmuch as even if

the Plaintiff had gone for sometime to the territory comprised in Pakistan before our Constitution came into force, the same could not have stood in

the way of the Appellant in his acquiring Indian citizenship under Article 5(c) of the Constitution. Shri Bari has referred in this connection to Central

Bank of India Vs. Ram Narain, , wherein it has been stated that residence to acquire ""domicile"" need not he continuous; of course, the same

cannot be fleeting also. If the visit was after the Constitution came into force, that would not have mattered at all. So far as acquisition of citizenship

under Article 5(c) is concerned, I have said about visit to Pakistan both before or after the coming into force of the Constitution, as from the

materials on record in is not clear what is the case of the Defendant la this regard. As to the assertion of the Defendant in coming back on Pakistani

passport, it may be stated, as would be noted later that it is of no significance for the Courts seized with the question of determining citizenship of a

person under Article 5(c) of the Constitution.

5. In so far as the expression ""ordinarily resident"" in Article 5(c) is concerned, the learned Counsel draws my attention to Smt. Shanno Devi Vs.

Mangal Sain, which has held that this expression, in the absence of its definition in the Constitution, should be taken to mean ""resident for the

period in question without any serious break"". From the evidence of P.W. 1, it appears that the Plaintiff stayed in Athgaon (Gauhati) for almost

eight years when he first came to Gauhati at the time of the World War. To the similar effect is the evidence of P.W. 2, who further deposed that

the Plaintiff, after staying in Athgaon with P.W. 1, married an Assamese girl at Athgaon, and shifted to Lakhtokia where he has been doing

business for 25/26 years by 1974. P.W. 1 too made these statements. The evidence of P.W. 2 was also not relied on by the learned Assistant

District Judge because he pleaded ignorance when he was asked if the Plaintiff bad gone to Pakistan and had come hack to India with Pakistani

Passport. The lack of knowledge of P.W. 2 about the full movement of the Plaintiff cannot be regarded as sufficient to disbelieve his evidence

about the stay of the Plaintiff in Athgaon and Lakhtokia. It may be stated that P.W. 1 is the person with whom the Plaintiff had stayed when he first

came to India as a boy of 11/12 years and P.W. 2 is a contractor of Lakhtokia, where the Plaintiff had started his own business, and as such, both

are natural witnesses to know about the stay and working of the Appellant. From the aforesaid admission of P.Ws. 1 or 2 it cannot be held that the

Plaintiff had not resided in India "" without any serious break"" when the Constitution came into force.

6. A strong case of the Plaintiff being an Indian citizen when our basic document saw light has thus been made out Learned Government Advocate,

however, presses into service Ext. "Ka" and "Ga". The first of those exhibits purports to be an application of the Plaintiff dated 16.7.66 for grant

of Visa for coming to India, Ext."Ga" is said to be an application of the Plaintiff dated 29.1.73. praying for time when he was served with ""Quit

India"" notice. Though I have heard arguments on the authenticity of these documents, I am ultimately refraining from expressing any opinion on this

aspect of the case, as it really relates to the question of termination of Indian citizenship on the Plaintiff"s acquiring citizenship of Pakistan which

case is sought to be established by the Defendants by relying on the entry of the Plaintiff in India on the strength of Pakistani Passport after

obtaining Visa from the competent authority of this Country, followed by overstaying here, which resulted in issuance of "Quit India" notice on him

in the wake of which the Plaintiff asked for sometime to leave India. My act of refraining any opinion on this aspect of the case of the Defendants

(as unfolded in para 12 of the written statement) is founded on the provision contained in Section 9(2) of the Citizenship Act, 1955, which requires

such a matter to be determined by the prescribed authority, which as per Rule 30 of the Rules made under the Act is the Central Government This

follows from what has been laid down in State of Andhra Pradesh Vs. Abdul Khader, , to which I was referred by Shri Bari himself, though in

some other context. That case has dealt with a question similar to one at hand. There, an Indian Citizen was prosecuted u/s 14 of the Foreigners

Act. What is material for our purpose is the observation in para 8 that ""the question whether the Respondent, an Indian citizen, had acquired

Pakistani citizenship cannot be decided by Courts"". The learned Magistrate had no jurisdiction therefore to come to the finding on the strength of

the Passport that the Respondent, an Indian citizen, had acquired Pakistani citizenship. It had been earlier stated in this para that if any question

arises as to whether an Indian citizen has acquired the citizenship of another country, the authority to decide that question, in view of Section 9(2)

of the Citizenship Act and Rule 30 of the Rules framed under of the Act, is the Central Government, Had the question on the strength of aforesaid

exhibit really been whether the Plaintiff is an Indian citizen or foreigner, I would have expressed my views on these exhibits, but in view of what has

been stated above, the moot question. With reference to these exhibits, would be, whether the Plaintiff, who has succeeded in establishing his case

of being an Indian citizen when the Constitution came into force, can be said to have renounced that citizenship and acquired a foreign nationality.

This can be decided by the Central Government only.

7. The result is that the case of the Plaintiff that he had acquired Indian citizenship by force of Article 5(c) of the constitution is accepted. Whether

he had renounced the same afterwards is left to be decided by the Central Government. The appeal stands allowed on these terms. Parties to bear

their own costs.