

(1959) 10 MP CK 0003

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No. 61 of 1959

Deen Mohammad Karim Bux
and Another

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision: Oct. 23, 1959

Acts Referred:

- Citizenship Act, 1955 - Section 9(2)
- Citizenship Rules, 2009 - Rule 30
- Constitution of India, 1950 - Article 226

Citation: AIR 1960 MP 381

Hon'ble Judges: V.R. Newaskar, J; H.R. Krishnan, J

Bench: Division Bench

Advocate: M.H. Khan, for the Appellant;

Final Decision: Dismissed

Judgement

Krishnan, J.

This is a petition under Article 226 of the Constitution of India by a couple who came to India on a Pakistani passport (which was visa-ed) for three months ending on 23-10-1954. Either they were successful, in concealing themselves, or the authorities forgot about them for nearly five years, but on 6-9-1959, they were served with notices by the Civil and Registration Authority of District Ujjain, to show cause why they should not be deported to Pakistan presumably under the Foreigners Act of 1946, as amended in 1957. We have the copy of notice served on the wife, and the copy of the cause shown by the husband; but we are told by Mr. Khan, learned counsel for the petitioners that the other notice and the other cause are identical.

It is urged that no order has yet been made; but they fear that it would be a final order for deportation, as indeed has been made in a number of similar cases; and that at that stage it will be physically impossible for them to seek the assistance of

this Court. They accordingly aver that they are Indian citizens, and it was only by mistake that they took a Pakistani Passport during a visit to that country in 1954 that they had applied in 1954 for a resettlement permit (on I form) to the Indian High Commissioner at Karachi and therefore the authorities should be directed by this Court by an appropriate writ not to deport them and at least to wait till they get an opportunity to move the Government of India u/s 9(2) of the Indian Citizenship Act and Rule 30 of the Citizenship Rules, and the latter disposes of their petition.

2. The facts stated above indicate that this is a typical petition of persons overstaying in India the visa-ed period of Pakistani passports and therefore calls for a full examination at this stage at least to save persons of this type from the trouble of making futile applications.

3. The first point is that no order has as yet been passed. The cause shown by one of the applicants is to the effect that he is an Indian citizen entitled to remain in India. There is no reference to a resettlement permit (I form) though it is mentioned in the argument. Some rulings have been quoted to show that no steps under the Foreigners Act can be taken at this stage. But those rulings have no application. In re, Abdul Khader, AIR 1959 Andhra Pra. 241 the acquisition or the determination of the Indian Citizenship of the applicant, was already under the active consideration of the Government of India, at the time of the deportation order.

The Court held that the authorities should wait till the Government of India made its decision. In such cases there can be a genuine doubt laised well before the deportation proceedings, as to the citizenship of the persons concerned, and it would be advisable to wait till the matter is decided by the Government of India, instead of pushing the persons across the border into a foreign country, from where it would obviously be very difficult for him or her to get the claim of citizenship decided at this end. This in effect is the principle contained in a Single Bench decision in [Nasir Ahmed Vs. The Chief Commissioner, Delhi and Another](#), though the few sentences read out by the learned counsel may suggest that the authorities should wait till the person concerned makes an application to the Government of India, and invites its decisions.

If that is the real intention of the rulings, I would respectfully disagree. It is one thing to say that a person whoso being a foreigner is in doubt, and who has already in due course moved the Government, or whose citizenship is under active consideration should not be unceremoniously deported without waiting for the Government decision, but it is altogether another thing to contend that a person who is prima facie a foreigner, and who has for five years overstayed the term of his visa, and who has done nothing to move the Government of India to clear this doubt about his citizenship -- that such a person should, when the deportation it imminent, be permitted to stay on for another term just to move that Government on the mere chance of his getting a favourable order.

Every State is entitled to protect itself and to turn out a person who has come on a foreign passport, visa-ed for a limited period, which he has overstayed. It is easy to assert that in spite of all appearances, he is not a foreigner, and has taken the foreign passport by mistake; but the applicants have done nothing for years to substantiate their allegations. Courts cannot obstruct the self-protecting orders of the State simply to enable the applicants to try their luck by fresh petitions which for several years past they could have done and have not.

4. The petition is summarily dismissed.

Newaskar, J.

5. I agree.