

(1956) 05 MP CK 0008

Madhya Pradesh High Court (Indore Bench)

Case No: Civil Miscellaneous Case No. 17 of 1956

Noor Mohammad

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: May 7, 1956

Acts Referred:

- Citizenship Act, 1955 - Section 11, 12, 12(1), 5
- Constitution of India, 1950 - Article 19, 19(1), 226, 367(3), 5
- Passports Act, 1967 - Section 3
- Passports Rules, 1980 - Rule 3, 4, 4(1), 5

Hon'ble Judges: Dixit, J; Chaturvedi, J

Bench: Division Bench

Advocate: M.A. Khan, for the Appellant; K.A. Chitale, General, for the Respondent

Final Decision: Dismissed

Judgement

Dixit, J.

This is an application under Article 226 of the Constitution of India for the issue of an appropriate direction, prohibiting the Madhya Bharat State from ordering the Petitioners to leave India.

2. The case of the Petitioners is that they were born in the territory of India and had their domicile in India at the commencement of the Constitution; that the Petitioner Noor Muhammad visited Pakistan in August, 1954 on an Indian Passport No. C 047048 dated 20-7-1954 and returned therefrom to Indore sometime in October, 1954; that after his return he and his wife, the Petitioner Mehmuna Bai and their minor child on misguided advice of some of their friends left Indore on 27-5-1955 and entered into the Dominion of Paldstan by crossing the Indian Frontier at Badmel in Rajasthan; that having gone to Pakistan they wanted to return to India and finding it impossible to do so without obtaining a Pakistan Passport, they applied to the Pakistan authorities for a passport to visit India, obtained it and came

to India on a Pakistan Passport No. 365498 dated 24-10-1955 with a category "C" Indian Visa No. 66741-42 for their stay in India upto 27-1-1956; that subsequently on their application the period of Visa was extended so as to permit them to Stay in this country until 26-2-1956; and that on expiry of that period, the police authorities of Indore acting under the instructions of the opponent State were insisting on their immediate departure from this country.

The Petitioners claim that they have always been citizens of India and that even though they went to Pakistan in May, 1955 and returned to India in November, 1955 on a Pakistan Passport they have, as citizens of this country, a fundamental right to remain there, and the insistence of the opponent State that they should leave this country is in violation of their fundamental rights under Article 19 of the Constitution of India.

3. In the return filed on behalf of the State the facts alleged by the Petitioners with regard to their leaving this country for Pakistan in May, 1955 and returning therefrom in October, 1955 on a Pakistan Passport are not denied. It is also admitted that the Petitioner Noor Muhammad first went to Pakistan in 1954 on an Indian Passport.

It is, however, averred that the Indian Passport issued to Noor Muhammad in 1954 was never got renewed by him; that in May, 1955 the Petitioners and their minor child entered Pakistan surreptitiously and without an Indian Passport with the intention of making Pakistan a place of their abode or residence in future; that this intention of theirs is manifest from their conduct in coming to this country in November, 1955 on a Pakistan Passport and in applying for the extension of the period of their stay in India; that the Petitioners are, therefore, persons who migrated to Pakistan after 1-3-1947 and consequently under Article 7 they cannot be deemed to be citizens of India; that as they are not citizens of India, they have no fundamental rights under Article 19; that their entry and stay in this country is governed by the Indian Passport Act, 1920 and the rules made thereunder and that, therefore, they cannot claim to stay in India when the period of their extended stay specified in the Visa has expired.

4. This petition was heard by us on 30-4-1956. At the close of the arguments, we dictated a short order dismissing the petition and postponing the statement of reasons for our conclusion to a later date. We proceed to do so now.

5. Mr. Khan learned Counsel appearing for the Petitioners first contended that the Petitioners, were born in India and had their domicile in India at the commencement of the Constitution and as such they were citizens of India under Article 5; that the Petitioners no doubt went to Pakistan in May, 1955 but it was only for a temporary purpose and for a short period; that they never migrated to Pakistan and that they were and always continued to be citizens of India; that Article 7 had no applicability to the Petitioners case, firstly because they never migrated

and secondly that Article applied only to those persons who migrated from India to Pakistan after 1-3-1947 but before 26-1-1950. I am unable to accede to this contention.

Article 5 of the Constitution no doubt confers the right of citizenship on every person who, at the commencement of the Constitution, had his domicile in the territory of India and who or whose parents were born in the territory of India or who had been ordinarily residing in the territory of India for not less than five years immediately preceding the commencement of the Constitution.

But Article 7, as has been pointed out by the Supreme Court in the case of The State of Bihar Vs. Kumar Amar Singh and Others, overrides Article 5. The effect of Article 7 is that even if a person is a citizen of India by virtue of Article 5, he cannot be deemed to be a citizen of India if he has migrated to Pakistan after 1-3-1947 unless his case falls under the proviso to Article 7. The proviso makes the substantive Article inapplicable to a person who after having migrated to Pakistan after 1-3-1947 has returned to India under a permit for resettlement or permanent return issued by the competent authority.

The language of Article 7 does not in any way support the contention of the learned Counsel for the Petitioners that it is applicable only to those persons who migrated to Pakistan after 1-3-1947 but before 26-1-1950. Learned Counsel was unable to point out to us, anything in the language of Articles 5 and 7 or anything in their background to justify the view that Article 7 must be restricted to cases of migration between 1-3-1947 and 26-1-1950.

Now it may be taken that the Petitioners were, born in India and had their domicile in the territory of India at the commencement of the Constitution. If, therefore, the Petitioners have not migrated to Pakistan after 1-3-1947, they would be the citizens of India under Article 5. But the facts alleged by the Petitioners themselves and those averred by the opponent State leave no doubt that the Petitioners migrated to Pakistan in May, 1955.

The facts are: (1) that the Petitioner Noor Muhammad first went to Pakistan in 1954 as an Indian citizen on an Indian Passport. He was thus aware of the fact that as an Indian citizen he could not enter Pakistan without an Indian passport; (2) that the Petitioner Noor Muhammad did not get the passport issued to him on 20-7-1954 renewed. When he went to Pakistan next time in May, 1955, he went without an Indian Passport and took away with him his wife and minor child.

The untenability of the suggestion that the Petitioners went to Pakistan in May, 1955 without an Indian passport and in a surreptitious manner on a wrong advice of some of their friends is evident from the fact that the Petitioner Noor Muhammad who is the head of the family went to Pakistan in 1954 with an Indian Passport and thus fully knew that as Indian Citizens he or the members of his family could not enter Pakistan without an Indian Passport; (3) that the Petitioners returned to India

in November, 1953 on a Pakistan Passport.

In that passport the Petitioners have been described as citizens of Pakistan with their domicile in Pakistan. I think it is a fair assumption to make that the statements in the Pakistan Passport about the Petitioners nationality and domicile must have, been entered on the basis of the statements made by them when they applied to the Pakistan authorities for a passport to visit India.

The Pakistan passport must, therefore be regarded as *prima facie* evidence of the Petitioners Pakistan nationality and of their intention of having made Pakistan as their abode or residence; and (4) that the Petitioner Noor Muhammad styled himself as a Pakistan national in the application (Appendix A to the return of the State) he made for obtaining a Visa. In that application he also mentioned 1950 as the date of migration to Pakistan.

On coming to this country Noor Muhammad applied (Appendix "D") on 6-1-1956 for an extension of the period of his stay, stating that he was unable to return to Pakistan within the period specified originally in the Visa and on the ground that he was undergoing medical treatment by a Vaidya in Indore. When there was some delay in the return of the passport with the extension prayed for, Noor Muhammad addressed a letter (Appendix "C") on 16-3-1956 to the Home Secretary pressing for the early return of the passport and saying that he wanted to return to Pakistan soon.

6. On the above facts there can be no doubt that when the Petitioners left India in May, 1955 without an Indian passport and in a surreptitious manner, they were actuated by the desire to secure a change of nationality and to make Pakistan as their domicile. They must, therefore, be held to have migrated from the territory of India after 1-3-1947. The Petitioners' case falls under Article 7 and they cannot be deemed to be citizens of India even if they were born in India and had their domicile in the territory of India at the commencement of the Constitution.

7. Learned Counsel for the Petitioners then argued that even if the Petitioners acquired the citizenship of Pakistan they did not cease to be Indian citizens, firstly because by the "Declaration as to Foreign States Order, 1950" issued under Article 367(3) every country within the Commonwealth was declared not to be a foreign State for the purposes of the Constitution and Pakistan was a country within the Commonwealth, and secondly because Article 9 did not deal with the loss of Indian citizenship by acquisition of the citizenship of a foreign State after the commencement of the Constitution.

I fail to see how this argument is of any assistance to the Petitioners. The effect of the "Declaration as to Foreign State Order, 1950" is only this; that wherever the words "foreign State" appear in the Constitution they must be taken as not including countries within the Commonwealth. This is clear from the wording of Article 367(3) and of the Order referred to above.

The Order does not mean that citizens of Commonwealth countries are Indian citizens even for the purposes of those Articles of the Constitution which do not contain the words "foreign State" and where the question of the interpretation of the expression "foreign State" does not arise. Article 7 does not use the words "foreign State". In Article 9 there is no reference whatsoever to Article 7.

That Article like Article 7 is a disabling provision. The fact that Article 9 does not deal with acquisition of citizenship of a foreign State after the commencement of the Constitution cannot, however, lead to the conclusion that Article 7 is inapplicable to those persons who migrated to Pakistan after 20-1-1950 and acquired Pakistan nationality. Such a construction would render nugatory Article 7.

8. Learned Counsel also referred to Section 11, Citizenship Act, 1955 (Act 57 of 1935) and contended that even if the Petitioners are regarded as Pakistan Citizens, they have by virtue of that citizenship the status of Commonwealth citizens in India and as such they have under Article 19 of the Constitution the fundamental right to move freely throughout the territory of India and to reside and settle in any part of India. I cannot accept this contention Section 11, Citizenship Act, 1955 no doubt says that:

every person who is a citizen of a Commonwealth country specified in the first Schedule shall, by virtue of that citizenship, have the status of a Commonwealth citizen in India.

Pakistan is a Commonwealth country and the Petitioners have no doubt the status of Commonwealth citizens in India. But the important question is as to the rights they possess in this country as Commonwealth citizens. The right of Commonwealth citizens are dealt with by Section 12 which is as follows:

The Central Government may, by order notified in the Official Gazette, make provisions on a basis of reciprocity for the conferment of all or any of the rights of a citizen of India on the citizens of any country specified in the First Schedule.

(2) Any order made under Sub-section (1) shall have effect notwithstanding anything inconsistent therewith contained in any law other than the Constitution of India or this Act.

Learned Counsel for the Petitioners was unable to point out to us any order of the Central Government conferring on Commonwealth citizens of the fundamental rights guaranteed to citizens of India under Article 19. In the absence of any such notification, the Petitioners cannot claim that they have the rights under Article 19(1)(d) and (e). Nor can they claim the fundamental rights conferred by Article 19 as Pakistan citizens.

That Article confers certain fundamental rights on the citizens of India and not on persons who are not citizens of India. All that is guaranteed to non-citizens is protection of life and liberty in accordance with the law of the land. In this

connection I need only refer to the decision of the Supreme Court in "Hans Muller v. Superintendent, Presidency Jail, Calcutta", AIR 1955 SC 367 (S) v. 42(B) where it has been held that Article 19 does not apply to foreigners.

9. The Petitioners being Pakistan citizens have thus no fundamental right to reside in this country. Their entry and stay in this country is governed solely by the Indian Passport Act, 1920 and the Indian Passport Rules, 1930 framed u/s 3 of the Act. Rule 3 of the Passport Rules reads as follows:

Save as provided in Rule 4, no person proceeding from any place outside India, shall enter, or attempt to enter, India by water, land or air unless he is in possession of a valid passport conforming to, the conditions prescribed in Rule 5.

Rule 4(1)(e) as amended in 1952 exempts from the provisions of Rule 3 persons domiciled in Pakistan proceeding from Pakistan who are in possession of migration certificates duly issued by an Indian Diplomatic Mission in Pakistan. The Petitioners are not in possession of such migration certificates so as to exempt them from the provisions of Rule 3. Their entry into India is governed by Rules 3 and 5 of the Passport Rules and under those rules they cannot stay in this country after the expiry of the period specified in the Visa and of the extended period thereafter.

A similar view has been taken in "Karimim Nisa v. State of Madhya Pradesh AIR 1955 Nag 6 (S) v. 42(C), Learned Counsel for the Petitioners raised the point that the Indian Passport Act, 1920 and the rules thereunder being repugnant to Article 19(1)(d) and (e) of the Constitution were void. If as I think, the Petitioners are not Indian citizens, but citizens of Pakistan and they have no fundamental rights under Article 19, then they cannot clearly contend that the Indian Passport Act and the rules thereunder in so far as they prohibit the entry into India of a foreigner except under a valid passport are repugnant to Article 19.

If Article 19 does not apply to foreigners, the question of the Indian Passport Act in its applicability to foreigners being repugnant to Article 19 cannot arise. As the Petitioners are not Indian citizens, the question whether the Indian Passport Act so far as it prohibits the entry of an Indian citizen from any place outside India without a valid passport is repugnant to Article 19 need not be considered and I express no opinion on it.

10. For the above reasons this petition for the issue of a suitable direction prohibiting the opponent State from compelling the Petitioners to leave this country must be dismissed. At the conclusion of the hearing learned Counsel for the applicants said that the Petitioners intended to apply u/s 5, Citizenship Act, 1955 for registration as Indian citizens and that for this purpose they may be allowed to stay in this country for sometime.

We have no doubt that if this is the intention of the Petitioners, and if they apply to the competent authority for the extension of the period of their stay on the above

ground, their request will be granted so as to enable them to apply u/s 5, Citizenship Act, 1955. In the circumstances of the case I would leave the parties to bear their own costs of this petition.

Chaturvedi, J.

11. I agree.