

(1988) 07 CAL CK 0049

Calcutta High Court

Case No: C.O. No. 786 (W) of 1979

Md. Ishaque

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: July 14, 1988

Acts Referred:

- Citizenship Act, 1955 - Section 9, 9(1), 9(2)
- Foreigners Act, 1946 - Section 3

Citation: (1989) 1 CALLT 275

Hon'ble Judges: Susanta Chatterji, J

Bench: Single Bench

Advocate: C.F. Ali and Mr. Syed Mujibur Rahaman, for the Appellant; S.K. Kundu, for the Respondent

Judgement

Susanta Chatterji, J.

The present writ petition has been filed by one Md. Ishaque praying, inter alia, for issuance of a writ of mandamus, commanding the respondents to cancel the impugned Order, dated 10.4.78 passed by the Deputy Commissioner of Police, Special Branch, Calcutta, copy whereof is Annexure "D" to the writ petition and also Order, dated 22.12.78 passed by the Deputy Secretary, Government of West Bengal, copy whereof is Annexure "E" to the writ petition. By the aforesaid Order, dated 10.4.78 the Deputy Commissioner of Police, Special Branch, Calcutta, in exercise of the powers conferred by Clause C of sub-section 2 of Section 3 of 1" Foreigners" Act 1946 (XXXI of 1946) read with Government of India, Ministry of Home Affairs, Notification No. 1/32/61 (XIII S.O. 811), dated 15th March, 1962 ordered that Md. Ishaque, a foreigner, a national of Pakistan, shall not remain in India after the expiry of 30 days from the date of service of the Order on him. By the Order, dated 22.12.78 the Deputy Secretary, Government of West Bengal placed on record that in continuation of the department's Letter No. 2106-P.C., dated 12th May, 1978 on the said subject, he was directed to state that on reconsideration of the case of Md.

Ishaque, it has been decided in consultation with the Government of India that there is no merit in his request for grant of Indian Citizenship or facilities for continued stay in India.

2. Being aggrieved by and dissatisfied with the aforesaid Orders, the petitioner has filed the present writ application for issuance of a writ of mandamus to cancel the said Orders and to restrain the respondents from giving any effect thereto and for other consequential reliefs as stated in the writ petition. It is alleged that the petitioner is an Indian Citizen by birth and domicile. It is further alleged that the petitioner was educated in Calcutta all through and his name has been recorded in the voters list of the Assembly and Indian Parliament from Jorasanko Constituency. He married in 1968 and towards the end of 1968 he went to Dacca with a cousin who had a business in Dacca just on a pleasure trip without any document as there was no restriction in the Benapole Checkpost. Due to his financial incapacity he was not in a position to come to India through United Kingdom but he was advised to apply for a Pakistani Passport for going to India and as such he applied for the same which was given to him in 1973. The Passport No. is AD 599712, dated 12.12.73. He has stated that the said Passport was obtained by him against his will and he had no intention to compromise with his Indian Citizenship. He has further alleged that on reaching India he placed all his cards before the Authorities who condemned him as a foreigner holding, inter alia, that Pakistani Passport is a conclusive proof of having voluntarily acquired the Citizenship of that country and as such steps were taken to expel him from the country without holding any enquiry as envisaged in Section 9 sub-section 2 of Citizenship Act. He goes on alleging further that the Deputy Commissioner of Police without any determination of his Indian Citizenship has no jurisdiction to issue the impugned Order asking him to quit India within 30 days. He was not given a right of hearing by any Authority concerned and the purported Orders (Annexures D and E) are illegal, arbitrary, mala fide and those are required to be quashed by issuing an appropriate writ by the Hon'ble Court. The petitioner has again alleged that a representation was made by the wife of the petitioner to the Chief Minister of West Bengal who referred to matter to the Home Department for reconsideration and without complying with the provisions as laid down in Section 9(2) of the Indian Citizenship Act, the Acts done or caused to have been done by the said department are wholly unwarranted and uncalled for.

3. The writ petition was entertained on 16th January, 1979 and although there is no interim Orders, the impugned Orders have not been given effect to and the writ petition is contested by filing an Affidavit-in-opposition.

4. Mr. Ali, Learned Advocate appearing for the petitioner, has very strongly argued that in the present case absolutely an injustice is being done and the facts of the case have not been appreciated by the Authorities concerned. In fact, the petitioner was an Indian Citizen and is an Indian Citizen at all material points of time. Under duress he had to accept a Pakistani Passport, without compromising his Indian

Citizenship and the entire case has not been considered by the Authorities concerned in the proper perspective. He has mainly drawn the attention of the Court to Section 9(2) of the Indian Citizenship Act. Section 9(1) of the said Act provides, inter alia, that any Citizen of India who by naturalisation and the registration or otherwise voluntarily acquires or has at any time between 26th January 1950 and the commencement of the Act voluntarily acquired the Citizenship of another country shall, upon such acquisition or, as the case may be, such commencement ceases to be a Citizen of India. :

Provided that nothing in the sub-section shall apply to a Citizen of India who during any war in which India may be engaged voluntarily acquires a Citizenship of another country until the Central Government otherwise directs.

5. Section 9(2): If any question arises as to whether, when or how an/ person has acquired the Citizenship of another country, it shall be determined by such Authority, in such a manner and having regard to such rules of evidence, as may be prescribed in this behalf.

6. Mr. Ali has drawn the attention of the Court to a case reported in [Akbar Khan Alam Khan and Another Vs. The Union of India \(UOI\) and Others](#), . The ratio of the said decision is that sub-section (2) of Section 9 of the Citizenship Act rules out the jurisdiction of the Civil Court to try the question mentioned therein because it says that this question has to be determined by the prescribed Authority which necessarily implies that none else has the right to decide. The conclusion, however, is that a Civil Court. is prevented by Section 9 from determining the question whether a Citizen of India has acquired Citizenship of another country or when or how he acquired it. If that question is answered in the affirmative than no further question would arise and the Suit has got to be dismissed. The question also was considered whether a person had any right to approach Central Government to decide the question if he had lost his Indian Citizenship. After all deliberations, it has clearly been found out that sub-section 2 of Section 9 of the Citizenship Act rules out the jurisdiction of the Civil Court. It is the Central Government which should decide the question whether a person had renounced its Indian Citizenship and acquired a Foreign Citizenship and then dispose of the rest in the manner as it has to be decided according to law. The next case relied upon is reported in [Mohd. Ayub Khan Vs. Commissioner of Police, Madras and Another](#), . It has been found that Section 9(1) of the Citizenship Act provides for termination of Citizenship of an Indian Citizen if he has subject to the proviso by naturalisation, requisition or otherwise voluntarily, acquired Citizenship of another country. The determination of the question postulates an approach as if in a quasi-judicial enquiry. The Citizen concerned must be given due notice of the nature of action which in the view of the Authority involves termination of the Indian Citizenship and reasonable opportunity must be accorded 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

Authority on a plea raised by the Citizen concerned should be, depends upon the circumstances of each case.

7. Mr. Ali has laid much emphasis upon those decisions and argued that looking to Section 9(2) of the Citizenship Act the Authorities concerned ought to have given an opportunity to the petitioner of being heard as to the proposed action. The Central Government is the only Authority to hold such an enquiry and to pass an appropriate Order. The Deputy Commissioner of Police, as in the present case or the Deputy Secretary, Government of West Bengal, however, have no jurisdiction to pass the impugned Orders. Mr. Ali has further submitted that Rule 3D of the Citizenship Rules 1956 provides inter alia that if any question arises as to whether, when or how any person has acquired the Citizenship of another country, the Authority to determine such question shall for the purposes of Section 9(2), be the Central Government. The Central Government shall determine any such question without due regard to the rules of evidence specified in Schedule III. According to him, it will be clear from the expression made in AIR 1965 SC (Supra) that such an enquiry would be made by way of any quasi judicial proceeding. In the instant case, there is a failure on the part of the respondent authorities to adjudicate such a point in the proper perspective, and the petitioner cannot be asked in such a brevis menu fashion to leave India in don quixotic manner.

8. Mr. Kundu the Learned Advocate appearing for the Union of India has however placed the entire record before this Court. With all anxieties this Court has gone through the entire writ petition, the materials on record as well as the entire file produced by the contesting respondents.

9. Having gone through the entire records and after hearing the Learned Advocate for the respective parties this Court finds that the petitioner was granted Emergency Certificate by the Deputy High Commissioner, Pakistan to leave Indian permanently in the year 1966 and to live in East Pakistan (now known as Bangladesh). As a Pakistani Citizen the petitioner came to visit India in the year 1969 by obtaining a Pakistani Passport bearing No. AC-390443/Dacca, dated 18.3.69 (C Visa 29982/Karachi, dated 10.11.69) and thereafter left India. The petitioner made two visits to India and declared himself as a Pakistani National and as Pakistani Citizen. The petitioner again was found renewing his Passport bearing No. AD 599712, dated 12.12.73 valid upto 12.2.78 and entered into India via Atari Check Post on the strength of Visa No. A-1082, dated 13.6.75 granted to him by the Government of India upon his declaration that he was a Pakistani National. The petitioner was granted extension of stay till 31.10.76 with a direction that the petitioner must leave India by that day. The petitioner at that time gave a declaration in writing declaring himself as a Pakistani National and undertook to live India by 3.10.76. Regard being had to the said background of the case it is contended on behalf of the petitioner that a Foreign Passport should not be taken to be the conclusive proof to treat him to be a Pakistani National and without complying with the procedure as laid down

u/s 9(2) of Indian Citizenship Act, steps ought not to have been taken by the respondents asking him to quit India in such a cavalier fashion. This Court has however, scrutinised the point. It appears from the materials on record that Mr. P. Vijaya Raghavan, Under Secretary to the Government of India, addressing a letter to the Deputy Secretary, Government of West Bengal on November 31, 1978 placed on record that it transpires that the case has been considered in the light of the information available. It was clearly found that there was no doubt that Md. Ishaque was not an Indian Citizen and that he acquired the citizenship of Pakistani as evidenced by the fact of his migrating to Pakistan in 1963 and his visits to India on his Pakistani Passport and short-term Indian Visa on more than one occasion. The Government of India does not consider that there is any merit in his request for grant of Indian Citizenship or facilities for continued stay in India. Proceedings u/s 9(2) of the Citizenship Act are not considered necessary in his case. The State Government has been requested to take action to enforce the decision as conveyed in Ministry's endorsement No. 16014-7-76-F III, dated 1.4.1977 and the Letter dated 10.1.78 and ask him to leave India forthwith. From the materials on record it has to be examined -that whether an Indian Citizen was forced to come to India having a Foreign Passport under duress and/or compulsion. In such a case the Passport itself would not be deemed to be conclusive proof against his Citizenship and the procedures as laid down u/s 9(2) of the Citizenship Act has got to be complied with. In such proceeding the Central Government is an Appropriate Authority and this Court has no doubt that while the proceeding under the Section 9(2) has got to be complied with, all opportunities of hearing must be given to the person concerned by way of natural justice and the matter has got to be adjudicated in the manner as provided for all purposes treating the same as a quasi judicial proceeding but when in an appropriate case a person comes to India not once but twice upon a Foreign Passport declaring himself unequivocally that he is a Pakistani Citizen and makes a representation without any reservation for grant of Indian Citizenship and upon consideration of materials such a prayer of the person concerned is refused by the Central Government which asked the State Government to implement the decision of the Central Government asking the person concerned to quit India in the manner as has been done in the instant case nothing u/s 9(2) of the Act is attracted. In such a case it is not appreciated that the aggrieved person should come to invoke the writ jurisdiction of this Court and to seek reliefs forestalling the entire step for more than a decade. This is really a very unfortunate situation. This Court does not approve for a moment the step taken by the petitioner who has tried to circumvent the position of law by filing the present writ petition and in a circuitous process he wants to stay in this country when he is not authorised to stay at all. The acts done and/or caused to have been done by the State Respondents are not contrary to and inconsistent with any provisions of law nor the right of the petitioner has been prejudiced in any manner whatsoever.

10. Having gone through the entire materials on record and looking to the provisions of law this Court does not find any merit in the writ petition. The petition appears to be thoroughly misconceived and speculative.

11. The writ petition is accordingly rejected with costs of 100 G.Ms. 12. There will be stay of operation of this Order for three weeks.