

State of U.P. Vs. Abdul Qayum

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Court : Allahabad

Decided On : Oct-31-1961

Reported in : 1963CriLJ817

Judge : Kailash Prasad, J.

Appellant : State of U.P.

Respondent : Abdul Qayum

Judgement :

Kailash Prasad, J.

1. Abdul Qayum was prosecuted under Section 14 of the Foreigners Act for breach of para 7(2) of the Foreigners Order, 1948 by over-staying in India after the expiry of the period indicated in the permit and subsequently extended from time to time. The learned Magistrate, who tried the case, acquitted Abdul Qayum. The State has, therefore, filed this appeal against the order of acquittal.

2. Abdul Qayum came into India on 15-12-1954 on a Pakistani passport No. 192177 and visa No. 69827 of category C. The Indian visa was Valid upto 9th March, 1955. The State Government, however, extended the period of his stay upto 12-12-1955. Upon the expiry of that period, Abdul Qayum neither obtained permission for further stay in this country nor did he go back to Pakistan. He was, therefore, prosecuted as mentioned above.

3. The defence of Abdul Qayum was that he is not a foreigner and the restrictions laid down in para 7 of the Foreigners Order were not applicable to him.
4. The learned Magistrate found that Abdul Qayum was not a foreigner and therefore acquitted him,
5. Admittedly Abdul Qayum was born in India long before the commencement of the Constitution. His parents and other members of the family always resided in India. The evidence on record proved that Abdul Qayum was a member of the Nyaya Panchayat Lohta, upto the year 1953 and participated in the proceedings of several cases tried by the Nyaya Panchayat. His name was included in the voters' list prepared in connection with the general elections held in 1952 and he exercised his right of franchise at that election. There is no doubt that Abdul Qayum did go to Pakistan. He took part in the proceedings of Nyaya Panchayat, Lohta in the year 1953. It is, therefore, clear that he went to Pakistan either towards the end of 1953 or some time in 1954.
6. The learned Counsel for the State contended that in the passport obtained by Abdul Qayum from Pakistan he was described as a Pakistani national and this clearly established that he had renounced Indian citizenship and was a foreigner. The learned Counsel also contended that the question of Abdul Qayum's being or not being a foreigner was inseparably linked with the question whether he has acquired the citizenship of Pakistan and as the question of citizenship can be determined only by the Central Government, it was beyond the competence of the Court to hold that Abdul Qayum was not a foreigner.
7. A complete answer to both these contentions of the learned Counsel for the State is furnished by the decision of the Supreme Court in State of Andhra Pradesh v. Abdul Khader : 1961 CriLJ573a . It was held in that case that 'the question whether a person is an Indian citizen or a foreigner, as distinct from the question whether a person having once been an Indian citizen has renounced that citizenship and acquired a foreign nationality, is not one which is within the exclusive jurisdiction of the Central Government to decide. The Courts can decide it.' The learned Magistrate was, therefore, competent to decide whether Abdul Qayum was or was not a foreigner.

8. The passport, which Abdul Qayum obtained from Pakistan, did show prima facie that he was a Pakistani national; but on the facts of the case Abdul Qayum must be held to have been an Indian citizen on the promulgation of the Constitution. The passport, therefore, can show no more than that he renounced Indian citizenship and acquired Pakistani nationality. Such evidence, as observed by the Supreme Court in the above referred case, would be of no use in the present case, for in view of Section 9(2) of the Citizenship Act a Court cannot decide whether an Indian citizen has acquired the citizenship of another country.

9. It was next contended by the State Counsel that Abdul Qayum in applying for extension of time conducted himself in a manner as to show that he was not the citizen of India and that he had acquired the citizenship of Pakistan. As mentioned earlier that is not a question which is open to a Court to decide and there is no evidence to show that it has been decided by the Central Government.

10. It is true that under Section 8 of the Foreigners Act the onus lay on Abdul Qayum to prove that he was not a foreigner. He has discharged the onus by proving that he was born and domiciled prior to 26th January 1950 when the Constitution came into force and thereby had become an Indian citizen under Article 5(a) of the Constitution. As his family all along remained in India and he went to Pakistan for a short time it cannot be said that he had migrated to Pakistan. It has not been shown that the Central Government had made any decision with regard to him under Section 9 of the Citizenship Act that he has acquired a foreign nationality. He was, therefore, rightly acquitted by the learned Magistrate.

11. The appeal has no force and is dismissed.