NasiruddIn and anr. Vs. Union of India (Uoi) and ors.

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Court : Madhya Pradesh

Decided On : Apr-29-1966

Reported in : AIR1966MP346

Judge : K.L. Pandey and ;S.P. Bhargava, JJ.

Acts : Constitution of India - Article 226; Citizenship Act, 1955 - Sections 9(2); Citizenship Rules, 1956 - Rule 30

Appeal No. : Misc. Petn. No. 464 of 1964

Appellant : NasiruddIn and anr.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : K.K. Dube, Deputy Government Adv.

Advocate for Pet/Ap. : Ram Kumar Verma, Adv.

Disposition : Petition allowed

Judgement :

Pandey, J.

1. This petition under Article 226 of the Constitution is directed against two separate orders dated 29th August 1964 whereby the Central Government, acting under Section 9(2) of the Citizenship Act, 1955, and Rule 30 of the Citizenship

Rules, 1956, determined that Nasiruddin (petitioner 1) and his wife Smt. Hasinabi (petitioner 2) had voluntarily acquired the citizenship of Pakistan after 26th January 1950 and before 10th January 1956. The petitioners have prayed that these orders be called up and quashed by certiorari and the respondents be directed to forbear from taking against the petitioners any action grounded upon those orders.

2. The material facts in so far as they are not disputed are these. When the Constitution came into force, the petitioners were Indian citizens living in India with their children. In the year 1954, the petitioner 2 and her children went to Pakistan. In February of the following year, the petitioner 1 too went to Pakistan. The two petitioners and their children then came to India on a Pakistani passport No. 398721 dated 10th January 1956 and category C Visa Nos. 14882 and 14883 dated 23rd February 1956, the object of coming to India purporting to be a visit to their relations. In February 1959, the Senior Superintendent of Police, Jabalpur (respondent 3) served on the petitioners an order purporting to have been passed under the Foreigners Act, 1946, requiring them to leave India. Thereupon, the petitioners and their children filed Miscellaneous Petition No. 118 of 1959 challenging that order. Following the decision of this Court in Firoz v. Sub-Divisional Officer 1960 MPLJ 1246: (AIR 1961 Madh Pra 110), that order was set aside on the view that a decision of the' Central Government under Section 9(2) of the Citizenship Act, 1955, to the effect that the person concerned had acquired the citizenship of another country was a pre-condition for the passing of any such order.

By two separate notices Exs. P-1 and P-2 dated 13th January 1964 issued by the Central Government, the petitioners were intimated that a question had arisen whether, and, if so, how they had acquired the citizenship of Pakistan and, therefore, they might send any representation they desired to make and also any other material they wished to rely upon in support of their contention that they had not voluntarily acquired the citizenship of Pakistan. The petitioners then sent their representations Exs. P-3 and P-4 claiming inter alia an opportunity to produce further evidence and a personal hearing. By a communication Ex. P-5 dated 12th June 1964, they were intimated that it was not possible to give them either an

opportunity to be heard in person or one for production of further evidence, but they were at liberty to submit additional material in the form of affidavits in support of their case. While protesting against this denial of the opportunity asked for by them, they submitted their affidavits Exs. P-8 to P-12. That was followed by the two impugned orders dated 29 August 1964, which have been challenged in these proceedings.

3. According to the petitioners, the father of petitioner 2 took her and her children to Pakistan by receiving her as to the destination of their journey, the petitioner 1 went to Pakistan to bring back his wife (petitioner 2) and the children and he succeeded in so doing by obtaining a Pakistani passport from a Dalai. The petitioners challenged the orders dated 29 August 1964 on the following amongst other grounds :

(i) Since the manner in which the questions mentioned in Section 9(2) of the Act have to be determined has not been prescribed in the rules made under Section 18(2)(h) of the Act, the question whether the petitioners had voluntarily acquired the citizenship of Pakistan could not be determined at all.

(ii) The two orders dated 29 August 1964 are bad because, in the two notices dated 13 January 1964, the Central Government did not indicate that it appeared to it that the petitioners had voluntarily acquired the citizenship of Pakistan.

(iii) In determining the questions mentioned in Section 9(2) of the Act, the Central Government acts as a tribunal and is, in that capacity, obliged to adopt in the enquiry a quasi-judicial approach.

(iv) The two impugned orders are vitiated because the petitioners were not given an adequate opportunity to prove that they had not voluntarily acquired the citizenship of Pakistan and, in particular, the fact that the Pakistani passport and visas were forged or ungenuine documents,

4. The respondents controverted the allegations and the grounds set out in the last paragraph and pleaded, without admitting that a quasi-judicial approach was necessary in the enquiry, that an adequate opportunity was afforded to the

petitioners and the principles of natural justice were duly observed. According to the respondents, the purpose for which the petitioners asked for an oral enquiry and representation through a counsel was foreign to the enquiry envisaged under Rule 30 of the Citizenship Rules, 1956.

5. Having heard the counsel at some length we have formed the opinion that there is not much substance in the first two grounds set out in paragraph 3 above. The relevant provisions which we have to consider are contained in Section 9 of the Citizenship Act, 1955, Rule 30 of the Citizenship Rules, 1956, made under Section 18(1) of the Act and Schedule III to these Rules which are reproduced :

'Section 9(1) Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

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

(2) If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.'

' Rule 30 (1) 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.

(2) The Central Government shall in determining any such question have due regard to the rules of evidence specified in Schedule III.'

'Schedule III, 1. Where it appears to the Central Government that a citizen of India has voluntarily acquired the citizenship of any other country, it may require him to prove within such period as may be fixed by it in this behalf, that he has not

voluntarily acquired the citizenship of that country; and the burden of proving that he has not so acquired such citizenship shall be on him.

(2) For the purpose of determining any question relating to the acquisition by an Indian citizen of the citizenship of any other country, the Central Government may make such reference as it thinks fit in respect of that question or of any matter relating thereto, to its Embassy in that country or to the Government of that country and act on any report or information received in pursuance of such reference.

(3) The fact that a citizen of India had obtained on any date a passport from the Government of any other country shall be conclusive proof of his having voluntarily acquired the citizenship of the country before that date.

(4) In determining whether a citizen of India has or has not voluntarily acquired the citizenship of any other country, the Central Government may take the following circumstances into consideration, namely ;

(a) Where the person has migrated to that country with the intention of making it his permanent home;

(b) whether he has in fact taken up permanent residence in that country; and

(c) any other circumstances relevant to the purpose.

5. Notwithstanding anything contained in paragraph 4, a citizen of India shall be deemed to have voluntarily acquired the citizenship of Pakistan :

(a) If he has migrated to Pakistan with the intention of making it his permanent home; or

(b) if he has obtained any certificate of domicile in Pakistan or declared himself to be a citizen of Pakistan or of Pakistan domicile; or

(c) if he has applied for and obtained a right, title or interest in evacuee property in Pakistan; or

(d) if he has obtained a temporary permit for entry into India from Pakistan. Explanation : For the purpose of Clause (a) of this paragraph, a person shall not be deemed to have migrated to Pakistan with a view to making that country his permanent home :

(i) if he has left for a place in West Pakistan with a 'no objection certificate' and has returned to India under such permit for permanent return or re-settlement as may have been issued by or under the authority of any law in force in India or of the Government of India; or

(ii) if having left India at any time between the 1st February, 1950 and the 15th October, 1952, for a place in West Pakistan, he has returned to India with a repatriation certificate issued by or under the authority of any law in force in India or of the Government of India.'

In our opinion, Rule 30 and the various clauses of Schedule III to the Rules not only prescribed the authority competent to determine questions mentioned in Section 9(2) of the Act but also lay down the rules of evidence and thereby, by necessary implication, the manner in which the questions have to be determined. This is so because it is implicit in the rules of evidence that the questions have to be approached in a quasi-judicial manner. So, in Md. Ayub Khan v. Commissioner of Police AIR 1965 SC 1623 at p. 1627, Shah J. observed .

'Provision for prescribing rules of evidence having regard to which the question of acquisition of citizenship of another country has to be determined clearly indicates that the order is not to be made on the mere satisfaction of the authority without enquiry that the citizen concerned has obtained a passport of another country. The question as to whether, when and how foreign citizenship has been acquired has to be determined having regard to the rules of evidence prescribed and termination of Indian citizenship being the consequence of voluntary acquisition of foreign citizenship, the authority has also to determine that such latter citizenship has been voluntarily acquired. Determination of the question postulates an approach as in a quasi-judicial enquiry, the citizen concerned must be given due notice of the nature of the action which in the view of the authority involves termination of Indian citizenship, and reasonable opportunity must be afforded to

the citizen to convince the authority that what is alleged against him is not true.'

This we think fairly disposes of the first ground.

6. In regard to the second ground, Clause 1 of the Schedule III to the Rules (already reproduced above) envisages that the Central Government would require any citizen to prove that he has not voluntarily acquired the citizenship of any other country only if it appeared to it, meaning the Central Government, that he had done so. In AIR 1965 SC 1623 (supra) Shah J, forcefully slated the position in this way :

' Paragraph 1 of Schedule III which raises a rebuttable presumption when it appears to the Central Government that a citizen has voluntarily acquired foreign citizenship casts the burden of proof upon the citizen to disprove such acquisition and paragraph 2 which authorises the Central Government to make enquiries for the purpose of determining the question raised, strongly support the view that the Central Government must arrive at a decision that the Indian citizen has voluntarily acquired foreign citizenship before action can be taken against him on the footing that his citizenship is terminated.'

Even so, there is nothing in the Act or the Rules requiring the provisional conclusion to be communicated to the citizen concerned. On the other hand, having regard to the language employed in Clause l of Schedule III, the very fact that the petitioners were required to prove that they had not voluntarily acquired the citizenship of Pakistan implied that it did appear to the Central Government that they had done so. In any event, we think it proper to take this view of the matter when, in the two notices served on the petitioners, the passport and the visas brought by them were specifically mention ed and we are persuaded that the petitioners 'were in no way prejudiced by the fact that the provisional conclusion in that sense was not expressly mentioned in the two notices.

7. This takes us to the third ground. The respondents do not accept that, in determining the question, a quasi-judicial approach was necessary and they have said so in paragraph 11 of their return. The question, whether any authority acting under a statute or a statutory rule which is silent on the question whether it has the

duty to act in a quasi-judicial manner, depends on the express provisions of the statute, the nature of the rights, the manner of disposal provided, the objective criteria, if any, to be adopted, the effect of the decision on the person affected and other indications afforded by the statute. This matter is not, however, res integra and is covered by a direct authority of the Supreme Court in AIR 1965 SC 1623 (supra). Shah J., who spoke for the Court, observed :

'Section 9(1) of the Citizenship Act provides for termination of citizenship of an Indian citizen if he has (subject to the proviso which is not material) by naturalisation, registration or otherwise, voluntarily acquired citizenship of another country. Subject to the exception in the proviso, therefore, naturalisation, registration or acquisition of citizenship of another country operates to terminate the citizenship of India. Acquisition of citizenship of another country to determine Indian citizenship must, however, be voluntary. By Sub-section (2), provision is made for setting up an authority to determine the question where, when and how citizenship of another country has been acquired, and by Rule 30 the Central Government is designated as the authority which is invested with power to determine the question in such manner and having regard to such rules of evidence as may be prescribed. Provision for prescribing rules of evidence, having regard to which the question of acquisition of citizenship of another country has to be determined, clearly indicates that the order is not to be made on the mere satisfaction of the authority without enquiry, that the citizen concerned has obtained a passport of another country. The question as to whether, when and how foreign citizenship has been acquired has to be determined having regard to the rules of evidence prescribed, and termination of Indian citizenship being the consequence of voluntary acquisition of foreign citizenship, the authority has also to determine that such latter citizenship has been voluntarily acquired. Determination of the question postulates an approach as in a quasi-judicial enquiry; the citizen concerned must be given due notice of the nature of the action which in the view of the authority involves termination of Indian citizenship, and reasonable opportunity must be afforded to the citizen to convince the authority that what is alleged against him is not true.'

The view taken by the Supreme Court must now be regarded as concluding the question raised in this ground.

8. The only other ground which survives for consideration is whether the petitioners were afforded an adequate opportunity of proving that they had not voluntarily acquired the citizenship of Pakistan. As the authority designated to determine the questions mentioned in Section 9(2) of the Act, the Central Government had to adopt a quasi-judicial approach and observe the rules of natural justice. One of the essential elements of natural justice is the right of being heard or audi alteram partem, Some of the principles, which have been stated to constitute elements of natural justice, are merely extensions or refinements of this principle and, so far as this case is concerned, we may mention only two of them:

(i) Every person whose rights are affected must have a reasonable notice of the case he has to meet.

(ii) He must have a reasonable opportunity of being heard in his defence. This implies that no material should be relied on against him without his being given an opportunity of explaining them.

So far as the first of these two elements is concerned, we are persuaded that, in this case, the petitioners had notice of the case they had to meet. But we are of opinion that they have not had a reasonable or fair opportunity of being heard.

9. In the representation Ex. P-4 dated 25 February 1964 which was made by the petitioner Nasiruddin and relied upon by his wife also, it was stated as follows:

'In fact in view of what I have submitted about the circumstances and the way in which I got the passport, an enquiry should be made as to whether the passport was a forged one or a genuine one. Also I should be followed to cross-examine the Passport Issuing Authority of Pakistan whose signature appears on the passport apparently as to whether he signed it and as to whether he made any enquiry or investigation as to whether I was eligible for the grant of a passport.' 'That I pray that before a final decision is taken by the Central Government under Section 9(2) on the question of my voluntary acquisition of the citizenship of

Pakistan, I be given an oral hearing at which I may be allowed to examine my witnesses and to produce documents. I also pray that I be afforded the help of the Central Government to secure attendance of witnesses from India and Pakistan and to secure the production of documents lying with the Central Government, the Pakistan Government and the State Government and also the officials of the State Government, i.e. documents filed by me or on my behalf. I also pray that I be heard through counsel and that a counsel be allowed to help me in representing my case actually before the Central Government.

The present enquiry with which the Central Government is entrusted as a Special Tribunal relates to my basic right of citizenship and it is but meet and proper that the opportunity to be heard for which I have prayed as above should be afforded to me. No decision, it is submitted, can be taken on a mere issuance of notice and a reply thereto.'

10. In paragraph 5 of the petition, the petitioners expressly referred to their representations and to the opportunity they had asked for to prove inter alia that the Pakistani Passport was not a genuine one. In answer to those averments, the respondents stated:

'It is also admitted that the petitioners had asked for an oral enquiry and facility to be represented through a counsel. The purpose for which the opportunity was sought was foreign to the enquiry envisaged under Rule 30 of the Citizenship Rules, 1956, read with Schedule III. It is not admitted that the petitioners had ever alleged that the Pakistani passport and the Visas on the basis of which the petitioners had entered India were not genuine. The petitioners having entered India on the basis of Pakistani passport and the Visas are estopped from alleging that the said documents were not genuine. It may also he noted that in all previous applications and even in the Writ Petition No. 118/59 filed before this Hon'ble Court, the genuineness of these travel documents was never questioned. This is only an afterthought.'

In refusing to afford to the petitioners the opportunity they had asked for, the designated authority misconceived the true position which was stated in AIR 1965 SC 1623 (supra) as follows:

'But obtaining of a passport of a foreign country cannot in all cases merely mean receiving the passport. If a plea is raised by the citizen that he had not voluntarily obtained the passport, the citizen must be afforded an opportunity to prove that fact. Cases may be visualized in which on account of force a person may be compelled or on account of fraud or misrepresentation he may be induced, without any intention of renunciation of his Indian citizenship, to obtain a passport from a foreign country. It would be difficult to say that such a passport is one which has been 'obtained' within the meaning of Paragraph 3 of Schedule III and that a conclusive presumption must arise that he has acquired voluntarily citizenship of that country.'

(Page 1628)

11. Again the petitioners claimed that they should have been furnished with the information elicited against them under Clauses 3 and 4 of Schedule III before they were called upon to prove that they had not voluntarily acquired the citizenship of Pakistan. In answer, the respondents simply stated as follows:

'The interpretation put by petitioners on Rules 3 and 4 of Schedule III of the Citizenship Rules, 1956, is not admitted.'

It was not stated that, since no information had been elicited, there could be no question of furnishing such information to the petitioners. That being so, we presume that some information had in fact been obtained which was not made available to the petitioners. We need hardly state that it was contrary to natural justice to rely upon that information against the petitioners without making it available to them and giving them an opportunity of meeting it.

12. It may be that an opportunity of meeting a case can be effective without a personal hearing and a written representation may, in certain cases be sufficient: Madhya Pradesh Industries Ltd. v. Union of India Civil Appeal No. 465 of 1965 D/- 16-8-1965: (AIR 1966 SC 671). It may also be that, in certain circumstances, to afford to the person affected an opportunity to meet the case against him by affidavits may be a reasonable or fair compliance with the requirements of natural justice but, having regard to what the petitioners had to prove in this case and the

material they had to collect from Pakistan, the period of fifteen days from the date of receipt of the letter Ex. P-5 dated 12th June 1964 was quite insufficient and amounted, in effect, to a denial of a reasonable opportunity to meet the case even by affidavits. We need hardly state that whenever it is alleged that, as a result of the procedure followed by the authority required to adopt a quasi-judicial approach, there was a denial of n reasonable opportunity, it is open to this Court to examine the matter and decide whether the requirements of natural justice have been fulfilled. In our opinion, this requirement was not fulfilled in the sense indicated by us because only a short time of 15 days was allowed to the petitioners.

13. Having regard to the several infirmities noticed above in the procedure adopted by the designated authority, the two orders dated 29th August 1964 are vitiated and cannot be sustained, but nothing that we have said in this order should be regarded as an expression of any opinion on the merit of the defence or as precluding the designated authority from making a fresh enquiry in accordance with the requirements of Section 9(2) of the Act and the relevant rules.

14. The petition succeeds and is allowed. The two orders dated 29th August 1964 are quashed and the respondents are required to forbear from taking any action against the petitioners on the basis of those orders. The respondents shall bear their own costs and pay those incurred by the petitioners to whom the security amount shall be refunded. Hearing fee Rs. 100/-.