

**Mohammad Umar Vs. the State**

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**Court :** Orissa

**Decided On :** Jul-22-1960

**Reported in :** AIR1961Ori150; 26(1960)CLT610; 1961CriLJ353

**Judge :** R.L. Narasimham, C.J.

**Acts :** [Citizenship Act, 1955](#) - Sections 4(1), 5(4) and 8(2); [Constitution of India](#) - Article 7; Foreigner Act, 1946 - Sections 2, 3 and 14; ;Foreigner (Amendment) Act, 1957

**Appeal No. :** Criminal Revn. No. 418 of 1959

**Appellant :** Mohammad Umar

**Respondent :** The State

**Advocate for Def. :** Standing Counsel

**Advocate for Pet/Ap. :** P.V.B. Rao, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

R.L. Narasimham, C.J.

1. This is a petition in revision against the judgment of the Sessions Judge, Koraput-Jeypore maintaining the conviction of the petitioner and the sentence of one month's simple imprisonment passed on him under Section 14 of the Foreigners Act (Act 31 of 1946). The petitioner is a minor aged 14-15 years. His mother is the daughter of one Habib Isa (S. W. 1) who is a resident of Kotpad in Koraput district. The petitioner's father is one Anwar Ali who though formerly a resident of Kotpad migrated to Pakistan some time in 1949 and consequently lost his Indian citizenship under Article 7 of the Constitution.

2. The petitioner also went to Pakistan but returned to India with a Pakistani pass-port (Ext. 7) in which he was described as a citizen of Pakistan. In the C visa affixed to the pass-port issued to him, by the Indian High Commissioner in Karachi, it was noted that it was valid for three months from 22-2-56. The petitioner then came to his maternal grand-father's house at Kotpad and made application to the various authorities concerned for acquiring Indian citizenship. But his applications were rejected and finally the Government of Orissa in the Home Department in their letter No. 8116 dated the 1st June, 1957, (Ext. 5) informed him as follows:

Government of Orissa,

Home Department,

Memo No. 8116/PPT.

Dated Bhubaneswar the 1st June, 1957.

To

Mohammad Umar,

C/o Habib Issa, Main Road, Kotpad.

P. O. Kotpad, District Koraput.

Sub : Grant of extension of stay.

With reference to his petition dated the 28th January 1957, addressed to the Superintendent of Police Koraput, on the above subject, Government regret that they cannot accede to his request. An endorsement permitting him to leave by the 29th June 1957 has been given in his Pakisthani Passport bearing No. 423620 dated the 21st February, 1956, which is returned herewith.

The receipt of the pass-port should be acknowledged.

Sd. Illegible,

Under Secretary to Government'

The necessary endorsement was made on his passport permitting him to leave India on the 29th June 1957. The petitioner, however, did not leave India by that date and then, under the direction of the Superintendent of Police Koraput, a case was registered against him under Section 14 of the Foreigners Act, for contravention of paragraph 7 of the Foreigners Order, 1948. As the facts were all admitted, he was convicted by the trying magistrate and sentenced to one month's simple imprisonment.

3. Mr. P.V.B. Rao, appearing on behalf of the petitioner raised three interesting contentions: Firstly, he urged that the general rule that a minor retains the nationality of his father is subject to several exceptions and that in view of the evidence of the petitioner's maternal grandfather (D. W. 1) it must be held that the petitioner is a citizen of India and not a citizen of Pakistan and as such is no longer a 'foreigner'.

Secondly he urged that assuming that the petitioner is not a citizen of India nevertheless he was not a foreigner as defined in Section 2(a) of the Foreigners Act, prior to the amendment made to the definition of that expression by the Foreigners Laws (Amendment) Act 1957. Thirdly, he contended that in any view of the case his conviction for contravention of para 7 of the Foreigners Order was wrong inasmuch as no 'permit' was issued to him to remain in India for a specified period as required by that Order. In support of his second and third contentions he relied on an Allahabad decision reported in Mohd. Hanif Khan v. State, AIR 1960

All 434. In my opinion, none of these contentions is tenable.

4. It is a settled rule of private international law that the nationality and domicile of a minor are ordinarily determined by the nationality and domicile of his father. See AIR 1953 All 178, *Kulsum Bibi v. District Magistrate, Kanpur* and AIR 1957 Punj 86, *State v. Abdul Hamid*. It is on this principle that Section 4(1) and Section 8(2) of the Indian Citizenship Act 1955 are based. Doubtless this is not an invariable rule and statutory provisions have been made in that Act to enable a minor to acquire a nationality different from that of his father.

Thus Sub-section (4) of Section 5 says that the Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India. When the petitioner's father lost his Indian citizenship on his migration to Pakistan in 1949, by virtue of Article 7 of the Constitution, the petitioner, as his minor son, also lost his Indian citizenship and became a citizen of Pakistan. He made several applications to the authorities concerned for being registered as a Citizen of India, but they were rejected.

It is true that a passport alone is no evidence of citizenship, but apart from the passport the other admitted facts mentioned above show clearly that the petitioner ceased to be a citizen of India. The period of his stay in India was extended from time to time by the competent authorities on his application and necessary endorsements were made in the passport to that effect (see exts. 7/b, 7c and 7(d)). Ultimately he was informed by the State Government that further extension of time would not be granted and he was permitted to leave India by the 29th June 1957.

The mere fact that the maternal grandfather is a citizen of India, that the petitioner has been staying with him all along and that the petitioner intends to reside in India permanently (as deposed to by D. W. 1) would not give him Indian Citizenship, unless he gets himself registered as an Indian Citizen under Sub-section (4) of Section 5 of the [Citizenship Act, 1955](#).

5. The expression 'foreigner' was originally defined in Section 2(a) of the Foreigners Act 1946 as 'anyone who was not a natural born British Subject' but by

virtue of the amendment brought about by the Foreigners Laws (Amendment) Act 1957 (Act XI of 1957), the definition of this expression was amended retrospectively from the 19th January, 1957 as follows:

' 'Foreigner' means any person who is not a Citizen of India'.

The alleged date of the offence is the 29th June 1957 by which date the aforesaid definition of the expression 'foreigner' had already come into force. Hence though it may be an arguable question as to whether the petitioner was a foreigner in accordance with the old definition there can be no doubt that he became 'foreigner' from 19th January 1957 by virtue of the amended definition.

6. As regards the 'third contention of Mr. Rao it is admitted that apart from the letter of the Government of Orissa, in the Home Department, cited above, and the special endorsement made on the passport of the petitioner (Ex. 7) no special permit was issued to him by any competent authority authorising him to stay in India for a prescribed period. Mr. Rao may perhaps be right in his contention that paragraph 7 of the Foreigners Order requires a 'permit' as distinct from the visa or any other entry made on the pass-port of a foreigner.

There can be no question of contravention of Para 7 of the Foreigners Order unless the prosecution first establishes that a permit was issued by the competent authority. But this does not absolve the petitioner from his guilt. When his application for acquiring Indian citizenship was rejected by the authorities concerned, he was informed by the Government of Orissa in their letter of the 1st June 1957, that he was permitted to leave India by the 29th June 1957. It was for contravention of this direction of the Government that a case was started against him.

This will be clear from a perusal of the F. I. R. (Ext. 1) and the charge-sheet. It is true that it was stated in the charge that an offence under Section 14 of the Foreigners Act was committed by the petitioner on account of his contravention of paragraph 7 of the Foreigners Order 1948. But this inaccuracy in describing the details of the offence in the charge has not in any way prejudiced the petitioner. The prosecution led evidence to prove the Order of the State Government in the

Home Department (Ext. 5) and its due service on the petitioner; and he was also given adequate opportunities to cross-examine the witnesses with reference to that document.

7. The question that now arises is: What is the statutory significance of the letter of the Home Department dated the 1st June, 1957 (Ext. 5). It may not amount to a 'permit' within the meaning of paragraph 7 of the Foreigners Order, but I think it would be an order from the State Government within the meaning of Section 3 of the Foreigners Act. That section authorises the Central Government (or its delegated authority) to issue order either generally with respect to all foreigners or specially with reference to a particular foreigner.

It is not disputed that the State Government is the delegated authority of the Central Government. Hence Ext. 5 may be taken as a statutory direction to the petitioner informing him that his permission to stay in India was only till the 29th June 1957. As the petitioner admittedly did not comply with the direction to leave India by that date, he would be guilty under Section 14 of the Foreigners Act.

8. The Allahabad decision on which Mr. Rao relied, viz. AIR 1960 All 434, is clearly distinguishable. There it does not appear that apart from the period mentioned in the visa affixed to the passport any specific direction was given on any subsequent occasion by the competent authority, fixing, the period of stay of the accused in India. Hence the learned Judge held that mere fixation of the period in the visa would not suffice for the purpose of attracting the provisions of paragraph 7 of the Foreigners Order. Moreover in that case the date of the offence was the 20th August 1954 on which date the old definition of the expression 'Foreigner' was in force.

9. I must therefore, hold that the petitioner is a 'foreigner' and that he was rightly convicted under Section 14 of the Foreigners Act -- though the mention of paragraph 7 of the Foreigners Order in the charge was inaccurate.

The conviction and sentence are upheld and the revision petition is dismissed.