

Abdullah Vs. State of Rajasthan and ors.

Abdullah Vs. State of Rajasthan and ors.

SooperKanoon Citation : sooperkanoon.com/754489

Court : Rajasthan

Decided On : Apr-11-1972

Reported in : AIR1972Raj272; 1972()WLN245

Judge : C.M. Lodha and; M.L. Joshi, JJ.

Acts : [Constitution of India](#) - Article 7; [Citizenship Act, 1955](#) - Sections 9(2);
Evidence Act - Sections 4 and 35

Appeal No. : Civil Misc. Writ Petition No. 102 of 1972 and Criminal Misc. Habeas Corpus Petn. No. 70 of 1972

Appellant : Abdullah

Respondent : State of Rajasthan and ors.

Advocate for Def. : Raj Narain Munshi, Addl. Adv.-General and; P.N. Mohanani, Adv.

Advocate for Pet/Ap. : M.M. Tiwari, Adv.

Disposition : Petition dismissed

Judgement :

Lodha, J.

1. These are two connected petitions filed by one Abdul Hafiz on behalf of one Ahdullah alias Irsad Ali, son of Rehman Ali, resident of Malpura, District Tonk, at present detained in District Jail, Tonk under the orders of the Superintendent of Police, Tonk passed in exercise of the powers under Section 5 of the Foreigners (Internment) Order, 1962 (hereinafter to be referred as 'the Order'). The facts stated in both the petitions are almost identical. In the writ petition it has been prayed that the State of Rajasthan and its agents be prohibited from deporting the petitioner to Pakistan and any other appropriate writ, direction or order may be Issued, whereas in the Habeas Corpus Petition it has been prayed that the petitioner may be ordered to be released. Of course the prayer for restraining the State of Rajasthan and the Police from deporting the petitioner to Pakistan has been repeated in this petition also.

2. The learned Additional Advocate-General has stated before us at the very outset that in the present circumstances the petitioner is not being deported to Pakistan on account of continuance of hostility between India and Pakistan, but that he shall remain confined in Internment Camp until otherwise directed by the Central Government. In this connection we may observe that Section 5 of the Order itself provides that every person arrested under the provisions of sub-paragraph (1) shall be surrendered as soon as may be, to the Commandant of an Internment Camp in pursuance of sub-paragraph (2) shall be confined in the Internment Camp, until otherwise directed by the Central Government. In such circumstances, the question of deporting the petitioner to Pakistan does not arise and the prayer made on behalf of the petitioner for restraining the State of Rajasthan and its Officers from deporting the petitioner to Pakistan becomes infructuous and is therefore rejected as such.

3. The only point, therefore, we are called upon to decide is whether the petitioner's detention is illegal?

4. The petitioner's case is that he was born in village Malpura, District Tonk on 1-8-1935 and on 27-7-1943 he was admitted to the Government Middle School, Malpura on 27-7-1943 where he studied upto 7th Class and thereafter left the school on 9-7-1951. He goes on to state that he was married at Malpura to Smt.

Salma on 25-6-1946 and three sons and one daughter were born out of this wedlock. His case is that while he was working as a teacher in village Sarwar, District Ajmer, the Police arrested him on 17-12-1961 and since then he is being detained under the Foreigners (Internment) Order, 1962. The petitioner's grievance is that in spite of his having never migrated to Pakistan he is being illegally treated as a foreigner, and is being wrongly detained as an internee under the said Order. In support of his case he has produced a certified copy of Scholar's Register Form, a copy of the marriage certificate dated 25-6-1946 and copies of the relevant entries from the Municipal Voters' lists of Malpura for the years 1958 and 1959. In the course of arguments learned counsel for the petitioner also produced today copies of the voters lists of the Rajasthan Assembly prepared in the years 1966 and 1967.

5. No reply has been filed on behalf of the opposite parties to any of the two petitions but the State has filed a reply to the stay application in writ case No. 202 of 1972, and it has been submitted by the learned Additional Advocate-General that the said reply contains the whole case of the State. This reply has also been supported by an affidavit of Shri A. P. Tiwari, Superintendent of Police, Tonk who is one of the respondents in the Habeas Corpus Petition, and who is also the Officer-in-charge of the case. We do not see any harm in treating the reply filed on behalf of the State to the stay application in the writ case as the State's reply in both the cases specially when no objection has been raised on behalf of the petitioner to that course being adopted.

6. The case put forward on behalf of the State is that the petitioner having migrated to Pakistan in the year 1948 has become a National of Pakistan, and that he had in that capacity obtained the Visa of category 'C' from Pakistan on 26-2-1954. It is submitted that having come back to India on the basis of the aforesaid Visa the petitioner assumed a faked name Abdullah and went underground after the expiry of the time limit of the Visa. It has been further asserted that the petitioner was born not on 1-8-35 as stated by him but his correct date of birth was 15-3-31 as mentioned in the Visa. The correctness of the entries made in the Scholars Register Form has also been denied. According to the State, after migrating to Pakistan in 1948, the petitioner began to reside at Sakkar (Sindh

Pakistan) at 9433, Queen's Road. The petitioner is further alleged to have applied to the District Magistrate, Tonk for extending his Visa and on this application the District Magistrate, Tonk by his order dated 23-6-1954 extended the Visa for one month, i.e. upto 5-7-1954 and further extension was granted by the State Government upto 5-10-1954. The allegation of the State is that after 5-10-1954 when an effort was made to trace out the petitioner, his father Abdul Rehman reported to the Police that he had gone back to Pakistan in October, 1954. This report, however, turned out to be false. The petitioner had in fact shifted his residence from Malpura to Sarwar (District Ajmer) where he started working as a teacher in a Muktab School run by Waqf Department. It is alleged by the State that the petitioner was assisting the enemy country and was acting in a manner prejudicial to the public safety, and, therefore, in exercise of his powers under the Order of 1962 the Superintendent of Police, Tonk, who had been constituted as the Civil Authority under the Order arrested the petitioner and he was being detained as an internee under the said Order.

7. Learned counsel for the petitioner has strenuously urged that the Visa Ex. R. 1 relied upon by the State does not pertain to the petitioner, but that it refers to somebody else and that it is fully established by the Scholars Register Ex. A that the petitioner was born on 1-8-1935 and was studying in the Middle School at Malpura upto 9-7-1951 and had never migrated to Pakistan. To fortify his submission in this respect he has also placed strong reliance on the marriage certificate Annex. B as well as on the voters lists of the Municipal Board, Malpura and the Rajasthan Assembly referred to above. In support of his submission, that the Scholars Register is entitled to great weight and its correctness must be preferred to the entries contained in the Visa, he has relied upon *Mohd. Ikram Hussain v. State of U. P.*, AIR 1964 SC 1625; *Yusuf Ibrahim v. State of Gujarat*, AIR 1962 Guj 194; *Shivram v. Shiv Charan Singh*, ILR 14 Raj 26 = (AIR 1964 Raj 126); *Bhagwan Dass Singh v. Harchand Singh*, AIR 1971 Punj & Har 65; *Abdul Majeed v. Bharga-van*, AIR 1963 Ker 18; *V. M. Nampoothui v. K. M. Kuruvila*, AIR 1957 Ker 103; *Bhini Mandal v. Magaram*, AIR 1961 Pat 21; *Liladhar Bam'a v. Habibi*, AIR 1934 Nag 44 and *Ahmed Ullah Khan v. District Magistrate*, 1962 (1) Cri LJ 256 (All).

8. There is no doubt that an entry in the school register stating the fact in issue or relevant fact and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law upon him is relevant under Section 35 of the Evidence Act. The Scholars Register produced by the petitioner is therefore relevant but the question as to how such weight should be attached to the entries contained therein is a pure question of fact. In this view of the matter we do not consider it necessary to analyse the rulings referred to by the learned counsel. However, we cannot fail to point out that no affidavit of any person by whom the entries were made in the Scholars Register has been filed. Besides that, we find from the Scholars Register Form that upto 15-5-1948 when the petitioner was promoted to Class VI he had regularly attended the classes. It appears that he was not promoted at the end of the Session 1948-49 and therefore he was detained in Class VI and during the year 1949-50 he has been shown to be present in all the school meetings. According to this form he was promoted to Class VII on 3-8-1950 but he is again shown to have got plucked in Class VII so that he joined in VII Class next year in the session commencing from 9-7-1951 and thereafter it is not clear from the Scholars Register as to what happened to him.

It may be noticed that the total number of school meetings in the 6th Class for the year 1949-50 has been shown to be 23 only, This appears to us to be obviously wrong inasmuch as this is not possible by the very nature of things. In all other columns of the Scholars' Register the total number of school meetings has been shown to be ranging from 384 to 436. Consequently, we called upon the learned counsel to explain this obvious infirmity but the learned counsel expressed his inability to submit any explanation for it. However, at his request we asked the internee who is present in the Court as to what he had been doing from July 1949 to August 1950? To this the internee's reply was that during that period he was doing cultivation in India and later on after the learned counsel had made some submission on this point, the petitioner slightly changed his reply and said that during that period he was doing cultivation as well as attending the classes. The reply is most unsatisfactory but at any rate there is no explanation how the total number of school meetings during the period commencing from 1-7-1949 to 3-8-1950 was only 23.

In this connection we may also point out that in the column Record 'A' in the Scholar's Register Form it has been shown under the Heading 'Dates of Removal' that on 14-7-1949 he left the School for being admitted to Patwar School and then rejoined the School on 3-8-1950. No entry has been produced from the record of the so-called Patwar School to show that the petitioner was studying in the Patwar School from 14-7-49 to 3-8-1950. Apart from that, the entries made in column of Record 'A' are not consistent with the entries made in the columns under Record 'C', inasmuch as if the petitioner was studying in Patwar School from 14-7-49 to 3-8-1950 how could he be present in the Middle School during this period i.e. from 1-7-49 to 3-8-1950 as shown in the columns against Class VI? We have carefully perused the entries contained in the Scholar's Register Form and are constrained to observe that it does not inspire confidence and we are not prepared to place reliance on it.

9. The next document, that is, the copy of the marriage certificate produced by the petitioner also does not advance the petitioner's case any further inasmuch as the correctness of the contents of this certificate has not been sworn to by anybody, and the age of Irshad Ali mentioned in this document does not tally with the date of birth mentioned in the Scholar's Register Form or in the Visa.

10. It is the petitioner's own case as revealed in his document Annexure 'B' that there is one more Irsad Ali son of Rehman Ali residing in Malpura though his age on 1-1-1966 is mentioned as 23 years, The mere fact that the name of one Irsad Ali son of Rehman Ali is mentioned in the voters' list of the Municipal Board, Malpura as well as in the voters' list prepared for Rajasthan Assembly is, in our opinion, no conclusive proof of the fact that the petitioner was residing in Rajasthan at the time when the voters' lists were prepared. Moreover these lists pertain to a period when the petitioner had overstayed in India after coming from Pakistan on a Pakistani Passport and are therefore of no consequence. Having carefully examined the documents produced by the petitioner we have come to the conclusion that they are not at all sufficient to show that the petitioner has been continuously residing in India until the date of his arrest ever since he was born and had never migrated to Pakistan.

11. On the other hand, there is a chain of documents produced by the State which lead us to a firm conclusion that the petitioner migrated to Pakistan approximately in 1948. The name of the applicant has been mentioned in the Visa Ex. R. 1 as Irsad Ali and his father's name as Abdul Rehman, resident of village Nijamat Malpura. Here, it may not be out of place to point out that it is not the petitioner's case that any other Irshad Ali of Malpura had migrated to Pakistan even though he says that there is one more Irsad Ali in Malpura. Learned counsel, however, pointed out that in this Visa the person's date of birth has been mentioned as 15-3-1931, and place of birth as Jaipur, Rajasthan. So far as the place of birth is concerned we do not attach much importance to it as it may be a mere slip and in any case it does not make any difference so far as the identity of the man is concerned because his residence has been mentioned as Malpura. As regards the date of birth all that we can say is that it may not have been correctly got entered either in the application for Visa or in the Scholar's Register Form.

However, there are two sure checks about the identity of the man contained in the Visa itself: (i) description of the man, that is, his colour, height, and distinguishing marks on the body, and (ii) the photo of the applicant pasted on the Visa.

12. It appears that at the time when this photo was taken, apart from the petitioner being young he had a clean shave beard though he has now grown one. After a careful look at the petitioner, who has been brought before us we have found that he correctly answers the description of the person mentioned in the Visa, and that the photo pasted on the application form is of no other person than the petitioner himself. It is nobody's case that the visa is a forged document or any of its contents have been interpolated. Here we would also like to refer to the other documents produced by the State. Ex. R-2 is a letter from the District Magistrate, Tonk to the Passport Officer to the Government of Rajasthan, Jaipur informing the latter that Irsad Ali son of Abdul Rehman has been granted one month's extension of visa. Ex. R-3 is another letter of extension upto 5-10-1954. Ex. R-4 is a report by Abdul Rehman, father of Irsad Ali stating that his son Irsad Ali had gone to Pakistan in October, 1954.

Ex. R-5 is a letter from the Superintendent of Police, Tonk to the Incharge, Check Post Atari Road, District Amritsar enquiring from the latter whether Irsad Ali has crossed the Indian border to return to Pakistan. Ex. R-6 is another letter from the Superintendent of Police, Tonk to the same Officer asking the latter to send a copy of the photograph and the names and places where his visa was sent. Ex. R-7 is a letter from the Superintendent of Police, C. I. D., Special Branch Jaipur to all Superintendents of Police, Zone Officers and Incharge Check Post, Banner, informing them that Irsad AH son of Abdul Rehman of Malpura had. gone underground after the expiry of the visa as extended and is not traceable now and therefore an effort may be made to trace out the individual and a report be sent to the Head Office within a month. Ex. R.8 is another important letter addressed by the Superintendent of Police Ajmer to the Superintendent of Police, Tonk informing the latter that the person in qiuestion namely Irsad Ali son of Abdul Rehman of Malpura mentioned in the visa in question was working as a teacher in Islamiya Madarsa at Sarwar, and that he was the sole teacher in the School and was giving out his name as one Syed Abdullah, and that the person concerned was being sent to be dealt with according to law. Ex. R-9 is a copy of the telegram sent by the Superintendent of Police, Tonk to the Home Department, Government of Rajasthan, Jaipur stating therein that the person concerned had been traced out from Sarwar (Ajmer) and was being detained under Section 5 of the Order.

13. As already stated above after having had a careful look at the petitioner, who has been brought before us we have come to the conclusion that he is the same person whose photo has been pasted on the Visa Ex. R-1 and that he correctly answers the description of the person given in the Visa, for instance his height completely tallies with that mentioned in the Visa, so also he has a wound mark on the left arm as mentioned in the Visa. But more than that, the photo gives out the full story as to the identity of the man. Thus on the record placed before us we have no hesitation in coming to the conclusion that the petitioner is the person who obtained the Visa Ex. R-1 and we have no reason to doubt the correctness of the entry mentioned therein regarding his migration to Pakistan in 1948. In this Visa his nationality has also been mentioned as Pakistan against serial No. 6.

14. Learned counsel for the petitioner has urged in the alternative that even if the petitioner is held to have migrated to Pakistan in 1948 and to have come back to India in 1954, he cannot be said to have become a national of Pakistan or a foreigner. His argument proceeds thus: Even according to the date of birth mentioned in the Visa the petitioner was a minor, and he cannot be said to have voluntarily migrated to Pakistan. He has also submitted in this connection that under Section 9 of the [Citizenship Act, 1955](#) if any question arises as to where, when or how any person has acquired the citizenship of another country, it shall be determined by such authority (Central Government) in such manner and having regard to such rules of evidence as may be prescribed in this behalf, and since this has not been done the petitioner cannot be considered as a national of Pakistan inasmuch as he was born in India and was an Indian Citizen. In support of his contention learned counsel has relied on: Govt. of Andhra Pradesh v. Mohd. Khan, AIR 1962 SC 1778; Md. Ayub v. Commr. of Police, AIR 1965 SC 1623; State of Madhya Pradesh v. Peer Mohd., AIR 1963 SC 645; State of U. P. v. Rahrnatullah, AIR 1971 SC 1382; Mst. Allah Bandi v. Govt. of Union of India, AIR 1954 All 456; Sarafat AH Khan v. State of U. P., AIR 1960 All 637; Mukhtar Ahmad v. State of U. P., AIR 1965 All 191; Yusuf Ibrahim v. State of Gujarat, AIR 1962 Guj 194; and Shivram v. Sivcharan Singh, ILR 14 Raj 26 = AIR 1964 Raj 126, Civil Writ Pern. No. 877 of 1966; Guwallah Mohammad Quresi v. State of Rajasthan decided on 16-1-1968 (Raj); Civil Writ. Petn. No. 56 of 1967; Mehboob v. State of Rajasthan decided on 21-12-1967 (Raj).

15. Before we embark upon the consideration of the authorities relied upon by the learned counsel for the petitioner we wish to refer to the following passage relating to the significance and importance of a passport occurring in the judgment of their Lordships of the Supreme Court in *Satwant Singh Sawhney v. Asstt. Passport Officer, New Delhi*, AIR 1967 SC 1836.

'A passport, whether in England or in the United States of America serves diverse purposes; it is a 'request for protection', it is a document of identity, it is a prima facie evidence of nationality; in modern times it not only controls exit from the States to which one belongs, but without it, with a few exceptions, it is not possible to enter another State. It has become a condition for free travel.'

Again in *A. C. Kazi v. C. V Jathwani*, AIR 1967 Bom 235, it was observed that,

'A passport is a piece of evidence as to the nationality certifying the nationality of the holder of the passport and the request by the issuing country to a country to treat him as such and grant him protection and assistance.'

16. It, therefore, cannot be gainsaid that a passport is a piece of evidence of nationality and in the present case unless anything to the contrary is shown the nationality of the petitioner as mentioned in the passport must be taken as correct. As already mentioned earlier the petitioner has been described a Pakistan National in the Visa Ex. R-1 and prima facie he must be treated as such for the purposes of these petitions.

17. This, however, does not relieve us of the task of examining the petitioner's contention that the petitioner was a minor at the time when he migrated to Pakistan and was thus incapable of changing his nationality. True it is, that even according to the date of birth given in the Visa the petitioner had not completed 18 years when he migrated to Pakistan in 1948 even though he may have either entered 17th year or may have completed it because we do not know the exact date and month of migration of the petitioner. If the date of birth as mentioned in the Scholar's Register Form is taken to be correct i. e. 1-8-1935 the petitioner was about 12 years' old at the time of his migration to Pakistan.

18. In the cases decided by the Allahabad High Court, AIR 1954 All 456; AIR 1960 All 637 and AIR 1965 All 191, it has been held that an infant is unable to acquire a domicile of choice by his own act and in this connection reliance was placed on the following passage in Cheshire's Private International Law (6th Edition page 190) :--

'The primary rule is that the domicile of an infant automatically changes with any change that occurs in the domicile of the father. As between a living father and his infant child there is a necessary unity of domicile, even though they may reside in different countries. This unity is not destructible at the will of the father. It is not terminated if he purports to create a separate domicile for his son, for instance, by entrusting his future care and maintenance to a relative domiciled in another

country or by setting him up in business abroad.'

19. In AIR 1962 Guj 194, it was held by the Gujarat High Court that the petitioner being a minor at the time of migration to Pakistan could not be said to have voluntarily migrated to Pakistan so as to make Article 7 of the Constitution applicable to his case.

20. Before we consider the authorities taking the contrary view to the one propounded by the learned counsel, we may reproduce here Article 7 of the Constitution :--

'7. Notwithstanding anything in Articles 5 and 6, a person who has after the first day of March, 1947, migrated from, the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India;

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of Clause (b) of Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.'

The proviso has obviously no application to the petitioner but the contention on behalf of the State is that the petitioner's case is covered by this Article and he shall not be deemed to be a citizen of India after he migrated to Pakistan in 1948, even though he was then a minor.

21. In State v. Abdul Sattar, AIR 1963 Guj 226, it was held that a minor may not be able to contract but there is nothing in the [Constitution of India](#) to show that a minor cannot migrate. The idea of migration in Article 7 has also nothing to do with domicile. A boy of the age of 13 or 14 years can form an intention of going to Pakistan permanently. Either he can go to Pakistan with the permission of his father, in which case it would be migration with the consent of his father or if he has migrated to Pakistan without the consent of his father, it would show that he had terminated the guardianship of his father and had himself independently gone

to Pakistan. While coming to this conclusion the learned Judges of the Gujarat High Court placed reliance on the observations of their Lordships of the Supreme Court in *State of Bihar v. Kumar Amar Singh*, AIR 1955 SC 252. The same view was taken in a still later decision of the Gujarat High Court in *Habatullah Haji Fazale Hussain v. State*, AIR 1964 Guj 128.

22. In *Sulaiman Hussain Abidi v. Hyderabad State*, AIR 1955 Hyd 34, it was argued that the domicile and nationality of a minor must be deemed to be the nationality and domicile of his parents and since the appellant Suleman's mother was an Indian Citizen, he being a minor could not forsake his nationality For that of Pakistan by merely crossing the borders. This contention was repelled and it was held that the word 'migrate' occurring in Article 7 of the Constitution embraced in its scope two conceptions: (i) going from India to another country, and (ii) the intention to make the destination a place of future abode or residence. In other words the word embraced the notion of the transference of allegiance from the country of departure to the country of adoption. It was found that when the petitioner left for Pakistan he must have been a few months short of 18 years and became a major shortly after his arrival in Pakistan. It was further found from his representations made at a time when he had attained majority, that he was a Pakistan Citizen. In this view of the matter it was held that he had become a Pakistan national and had only paid a temporary visit to India.

23. In *Abdulgafoor v. State of Madhya Pradesh*, AIR 1968 Madh Pra 29 the petitioner was said to have been born at Gwalior in 1943. He went to Pakistan in 1954 and came back on a Pakistani Passport, obtained on a declaration of Pakistani citizenship, and went again to Pakistan in 1956. He was arrested on 27-2-1966 moving about in Neemuch and having a Pakistani passport with the photograph removed. The learned Judges came to the conclusion that the petitioner migrated to Pakistan of his own accord and not that somebody had kidnapped or abducted him. They also found that it was uncertain, that he was a minor at the time of his migration. But even if he was, his father or guardian was a party to it and did not in any manner disassociate himself from it. It was held that the State cannot be expected to know the circumstance in which he migrated. It was observed that even assuming that the petitioner was a minor, he accepted

Pakistani citizenship and had come to India on a Pakistani passport with which he was staying on for 10 years in secret. In this view of the matter it was held that the petitioner had lost his Indian citizenship and must be deemed to have acquired Pakistan nationality.

24. In *Mohd. Iqbal Alim Uddin v. State*, AIR 1963 Punj 520 where the petitioner had migrated from India in the year 1947 and having come back to India continued to stay here after the expiry of his Visa, it was held that the charge against him under paragraph 7 (2) of the Foreigners Order, 1948 cannot be quashed on the ground that the petitioner being a minor at the time of migration to Pakistan in 1947 could not have changed his domicile nor on the ground that the question whether an Indian citizen has acquired the citizenship of another country cannot be determined by the courts. It was further held that under Article 7 of the Constitution the petitioner could not be deemed to be a citizen of India. The learned Judge observed 'Migration is something distinct from the act of changing one's nationality or domicile and even if a minor is not capable of changing his nationality or domicile but he can certainly migrate in the sense of going away to another country for good. Even otherwise the petitioner is stated to have come to India in 1954 and he had attained the age of majority in 1951 according to the date of birth stated in some of the documents which he filed to obtain the passport from Pakistan. If he . decided to stay on in Pakistan after he attained the age of majority the intention to migrate could be proved from that fact.'

25. In *Mahomed Yusuf v. Union of India*, AIR 1967 Pat 266 it was held that the rule of Private International Law regarding the disability of certain classes of persons from changing their domicile must give way if on the facts found it can be held that there was in fact migration to Pakistan after the 1st March, 1947 as required by Article 7 of the [Constitution of India](#). It was observed that the rule of Private International Law cannot be supplied in construing Article 7 and the court has to examine whether on the proved or admitted facts and circumstances the minor can be held to have migrated from the territory of India to Pakistan.

26. The point seems to have been concluded by the judgment of their Lordships of the Supreme Court in *Kulathi Mammu v. State of Kerala*, AIR 1966 SC 1614. In

that case the interpretation of the word 'Migrated' in Article 7 of the Constitution was directly in issue. The alleged migrant Aboobacker was a minor of 12 years of age when he left India and went to Pakistan in 1948, It was contended on behalf of Aboobacker that Article 7 had no application in his case because migration contemplated in that Article must be with the intention to leave India permanently and settle finally in Pakistan and that as he was a minor at the time he left India he could not be imputed with any such intention. After an elaborate discussion of the law on the subject their Lordships (per majority) were pleased to observe as follows :--

'All these considerations therefore lead us to the conclusion that when the Constitution makers used the word 'migrated' in Article 6 and Article 7 they used it in the wider sense to which we have referred earlier and not in the narrower sense and this meaning is in our opinion in accord with the circumstances which prevailed at the time which resulted in large movement of population from one side to the other.

Even so we are of opinion, that there is one qualification which must be attached to the word 'migrated' as used in these two Articles, even though that word has the wider meaning of going from one place to another in the context of these Articles. That qualification is that the movement should not have been for a specific period.

.....

Barring such cases the word 'migrated' as used in Articles 6 and 7 has the wider meaning, namely, movement from one territory to another territory whether or not with the intention of permanent residence in the latter place.

.....

In the view we have taken of the meaning of the word 'migrated' in Article 7, it is unnecessary to consider the other point raised on behalf of Aboobacker, namely that a minor can never have the intention implicit in the narrower meaning of the word migrated'.'

27. Coming now to the facts of the present case it is obvious that the petitioner went voluntarily to the territory of Pakistan approximately in March, 1948 as mentioned in the Visa. It is equally obvious that he did not go for any specific purpose and for a short limited period, as he stayed there till 1954. His case, therefore, clearly falls within the meaning of the word 'migrated' in Article 7, and, therefore, by virtue of that Article he will be deemed not to be a citizen of India on the date of the commencement of the Constitution. Thereafter he has not claimed the citizenship of India, and should therefore be held to be a foreigner. It may also be pointed out here that according to the birth date given in the Visa he attained majority in the year 1949 and thereafter he stayed in Pakistan for about 5 years and came to India on a Pakistani Passport issued in 1954 (Ex. R-1). This fact also gives a clue to the petitioner's mind to settle down in Pakistan. In our opinion, the petitioner's contention that he was a minor at the time when he went to Pakistan is only an allegation of convenience and cannot help him.

28. The above finding is enough to dispose of the other allied contention of the petitioner that the question whether, when and how any person has acquired the citizenship of another country shall be determined by the Central Government under Section 9(2) of the [Citizenship Act, 1955](#). It may be pointed out that Section 9 of the said Act has application only to those persons who are alleged to have voluntarily acquired the citizenship of another country at any time between 26-1-1950 and the commencement of that Act i.e. 30-12-55, Only cases of voluntary acquisition of foreign citizenship after the commencement of the Constitution have to be dealt with by the Government of India under the [Citizenship Act, 1955](#). The present case is, however, clearly governed by Article 7 of the Constitution. Consequently, the argument advanced on behalf of the petitioner based on Section 9 of the Citizenship Act has no substance and is also rejected.

29. The result of the foregoing discussion is that the petitioner must be held to be a national of Pakistan and the order of internment passed against him cannot be said to be illegal.

30. Both the petitions are therefore dismissed, but without any order as to costs.

31. Learned counsel for the petitioner prays that both the cases may be certified to be fit for appeal to the Supreme Court. However, we do not consider any of the two cases to be a fit one for appeal to the Supreme Court. The prayer is disallowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com