

Ali Ahmad Vs. Electoral Registration Officer and ors.

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Court : Kolkata

Decided On : Apr-24-1964

Reported in : AIR1965Cal1,1965CriLJ22,68CWN1140

Judge : R.S. Bachawat and ;A.K. Mukherjea, JJ.

Acts : [Constitution of India](#) - Articles 7 and 226; ;[Citizenship Act, 1955](#) - Sections 5(1), 9 and 9(2); ;Representation of People Act - Section 16; ;Citizenship Rules, 1956 - Rule 3

Appeal No. : A.F.O.O. No. 20 of 1962

Appellant : Ali Ahmad

Respondent : Electoral Registration Officer and ors.

Advocate for Def. : N.C. Chakravarty, G.P. and ;N.C. Das, Adv.

Advocate for Pet/Ap. : C.F. Ali, ;Rafiqul Islam and ;Hafizur Rahman, Advs.

Disposition : Appeal dismissed

Judgement :

Bachawat, J.

1. The appellant and his parents were all born in the district of Birbhum. He had his ancestral home in that district. He was serving in the Posts and Telegraphs

Department. In 1947 he opted for Pakistan. The option was provisional for six months and thereafter became final. The final exercise of option to serve the Pakistan Government is strong evidence of migration within the meaning of Article 7 of the Constitution (see *Aslam v. Fazal*, : AIR1959 All79 . According to the appellant he left his wife in India and she visited him twice in 1948 and 1952. Article 7 is peremptory in its scope and makes no exemption for a husband migrating to Pakistan leaving his wife in India, (see *State of Bihar v. Amar Singh*, : [1955]1SCR1259 . The appellant stayed in Pakistan for six years. He returned to India in 1953 along with his wife under a Pakistani passport. Independently of Schedule III, Rule 3 of the Citizenship Rules, 1956, the Pakistan passport is strong evidence of the Pakistani nationality of the appellant (see *Izhar Ahmad Khan v. Union of India*, : AIR 1962 SC1052). The passport is prima facie evidence of the national status of the holder, though independently of Schedule III, Rule 3, it is not conclusive evidence. The appellant also made an application for grant of Indian citizenship under Section 5(1)(a) of the [Citizenship Act, 1955](#). This application is also evidence of the fact that the appellant is not an Indian, Citizen. On a consideration of all these facts, the Electoral Registration Officer and the Chief Electoral Officer found that the appellant migrated to Pakistan in 1947 and never became a Citizen of India and directed the deletion of his name from the electoral roll of Murarai Assembly Constituency. These findings are supported by the materials on the records and cannot be said to be either arbitrary or perverse. The tribunals acted legally and within the sphere of their jurisdiction. I, therefore, think that those findings ought not be interfered with. The appellant prayed for the issue of a Rule nisi against the order of the Electoral Registration Officer only, but Mr. Ali said that by oversight the appellant did not ask for a Rule against the order of the Chief Electoral Officer. We have, therefore, considered the matter on the footing that the application was directed against both the orders,

2. Section 9(2) of the Citizenship Act does not preclude the tribunals from, recording the finding that the appellant had migrated to Pakistan in 1947 and, therefore, never became a Citizen of India. Section 9(2) debars a Court from trying the issue whether an Indian Citizen has acquired the citizenship of another country, but the section does not bar the Court from considering the question whether the person concerned ever became a citizen of India--See *Akbar Khan v.*

Union of India, : [1962]1SCR779 , State of Andhra Pradesh v. Abdul Khader, : 1961 CriLJ573a . The appellant having migrated to Pakistan in 1947 never became a citizen of India on the commencement of the Constitution. In Choudhury Abdul Kasem v. Supdt. of Police, Burdwan, Civil Rule No. 4643 of 1960, D/-29-1-1963 (Cal) unreported, Banerjee, J. seems to have decided the case on the footing that the opting for service under the Government of Pakistan and the going out of India in 1947 gave rise to the question whether the person concerned had renounced his Indian citizenship and that such a question could be decided only by the Central Gov-ement. With respect I am unable to agree with this decision. If a person has migrated from the territory of India after the 1st day of March, 1947, to the territory now included in Pakistan, he cannot be considered to be a citizen of India having regard to Article 7 of the Constitution. The Civil Courts are in no way precluded from considering the question whether such a person ever became a citizen of India.

3. In my opinion the appeal should be dismissed with costs hearing fee being assessed at three gold mohurs.

4. An oral application for stay is rejected.

Arun K. Mukherjea, J.

5. I concur with the judgment and order of my Lord Mr. Justice Bachawat. I would, however, add a few words of mine.

6. Under Section 16 of the Representation of the People Act, 1950, a person who is not a citizen of India is disqualified for registration in the Electoral Roll and the name of any person who becomes so disqualified for registration shall, if his name is already on the Electoral Roll, be forthwith struck off from the Roll. The appellant's name, it appears, had been entered, in the Electoral Roll of the Murarai. Assembly Constituency and the Electoral Registration Officer of Rampurhat served a notice on him under Section 22 of the said Representation of the People Act, 1950, asking him to show causa why his name should not be deleted from the Electoral Roll. For taking action under Section 16 of that Act, the Electoral Registration Officer had to decide whether the appellnat was or was not

an Indian citizen. In the instant case, he came to a finding that the appellant was not such a citizen. Under Section 30 of the Representation of the People Act, the question whether the appellant was entitled to be registered in an Electoral Roll is one which the civil Court has no jurisdiction to entertain or adjudicate upon and the legality of the decision of the Electoral Registration Officer and the action taken by him for the revision of the electoral roll cannot be questioned. It is clear, therefore, that the order of the Electoral Registration Officer or the subsequent order of the Chief Electoral Officer affirming the order of the Electoral Registration Officer cannot be interfered with except on the ground that they had no jurisdiction or that their decision was perverse in the sense that there were no materials before them on which any reasonable man would come to such a finding, Both the Registration Officer and the Chief Electoral Officer relied on three facts, namely, that the appellant had migrated to Pakistan after March, 1947, that he had taken a Pakistani passport and that he had made an application under Section 5(1)(a) of the Citizenship Act. Ordinarily there is a presumption that a person holding a Pakistani passport is a Pakistani Citizen. Besides, an application under Section 5(1)(a) can be made only by a person who is not a citizen of India by virtue of the [Constitution of India](#) or by virtue of any other provision of the Citizenship Act and who wishes to register himself as a citizen of India. The question whether the appellant had migrated to Pakistan or not is also a question of fact. Therefore, since the Registration Officer and the Chief Electoral Officer came to their decision on the basis of these three facts, one cannot say that their finding was without any substance whatsoever. The High Court in the exercise of its Writ Jurisdiction cannot act as an appellate Court and interfere with this decision.

7. Mr. Ali appearing for the appellant contended that since the appellant was born in Bir-bhum which is a part of India he was originally an Indian citizen at the commencement of the Constitution. Therefore, whether his citizenship terminated by reason of his taking a Pakistani passport is a matter which only the Central Government can decide. This view ignores Article 7 of the [Constitution of India](#) which excludes the operation of Article 5 altogether in regard to a person who has after the 1st day of March, 1947, migrated from the territory of India to the territory now included in Pakistan. The fact that the appellant had opted for service in Pakistan and had gone to Pakistan in 1947 and that he stayed there till 1953 is

admitted. It is, however, urged on behalf of the appellant that the appellant had no intention of taking his permanent residence in Pakistan. But this, as I have said, is also a question of fact and it was quite within the competence of the Electoral Registration Officer and the Chief Electoral Officer to decide on evidence adduced before them.

8. Mr. Ali sought to invoke Section 9 of the Citizenship Act. On the facts of this case I do not see how that section can be invoked. Section 9 of the Citizenship Act deals with acquisition of foreign citizenship subsequent to the commencement of the Constitution. The very opening words of Sub-section (1) of Section 9 of the said Act make it clear that it applies only in the case of a person who was originally a citizen of India. The [Constitution of India](#) does not favour plural or dual citizenship. With regard to the period prior to the commencement of the Constitution, Article 9 of the Constitution provides that a person who had voluntarily acquired the citizenship of a foreign country cannot have the status of an Indian citizen. With regard to the period subsequent to the commencement of the Constitution, Section 9(1) of the Citizenship Act provides that if an Indian Citizen acquires foreign citizenship either as a result of naturalization or of registration or of any other method of voluntary acquisition of such citizenship, he ceases to be a citizen of India. It is only in cases where a dispute arises as to acquisition of foreign citizenship by a person who was originally an Indian Citizen that the question has been left by the Citizenship Act to be determined by an authority prescribed by the Citizenship Act in such manner and having regard to such rules of evidence as may be prescribed in this behalf see AIR 1962 SC 1952 and *The Union of India v. Ghaus Mohammad*, : 1961 CriLJ703 . On the facts of this case, therefore, Section 9 of the Citizenship Act has no application at all.

9. As I have already said, the question as to whether the appellant was a foreign citizen or an Indian Citizen at the commencement of the Constitution is a question of fact. On this question of fact we cannot sit in appeal over the findings of the Electoral Registration Officer or of the Chief Electoral Officer. If that question has to be agitated at all, a proceeding under Article 226 is not appropriate for that purpose. The question can best be decided by a suit, : 1961 CriLJ703 .

10. In this view of the matter I agree with the order of my learned brother that the appeal should be dismissed with costs.

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