CASE ANALYSIS: STATE OF U.P. V. REHMATULLAH, (1971) 2 SCC 113

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FACTS OF THE CASE:

The respondent, Rehmatullah, had been arrested for overstaying as a foreigner in India on July 11, 1963. He was accused of an offence stipulated under Section 14 of the Foreigners Act (Act No. 31 of 1946) on March 6, 1965 by the City Magistrate of Varanasi. The charge was in essence associated with the overstay of Rehmatullah in India, who had entered into India from Pakistan on April 1, 1955 and as per his visa, he could legally stay in India up to May 5, 1956. However, he had illicitly stayed back in the country for a duration more than what he was supposed to, and was thus charged under Section 14 of the Foreigners Act.

ISSUES:

The fundamental issue that lay before the Court was: Whether or not an individual who had lost his citizenship of India and has become a citizen of a foreign nation should be tried by Central Government?

PETITIONER'S CONTENTION:

As per the contentions of the petitioner, the respondent was a Pakistani by nationality. On April 1, 1955, he had entered India with a Pakistani passport, which was dated March 15, 1955, and with an Indian Visa which was dated as March 15, 1955. However, he had extended his stay post the expiry of the date till which he could legally reside in India. Ergo, he was staying in India without a visa or a passport. Indisputably, the original visa had lost its validity on June 21, 1955. It was, however, extended thrice and the last time it was valid was only up to May 25, 1956. Post that, the respondent had gone underground and was illicitly residing in India. The respondent was finally arrested on July 11, 1963.

RESPONDENT'S CONTENTION:

The Respondent had pleaded that albeit he had entered the country with a Pakistani passport, he was not a citizen of Pakistan. He claimed that he was an Indian citizen and thus was residing in India as a lawful citizen. As per the respondent, he was born to Indian parents in India in 1932 and was thus a citizen of India, as per the principles enshrined in the Constitution.

JUDGES VIEW:

The State contended that Section 2(a) of the Foreigners Act gives the definition of the term "foreigner" as an individual who is not an Indian citizen. If the respondent is not an Indian citizen, Shri Rana maintained that the prosecution and the conviction as under Section 14 of the Foreigners Act were impregnable as a foreigner. As a result, the High Court's ruling in acquitting the defendant was unconstitutional. However, this submission is flawed. The Foreigners Law (Amendment Act 11 of 1957) had replaced the prior definition of the term "foreigner" with effect from January 19, 1957. It can be clearly observed that the new definition is irrelevant in evaluating the status of the respondent at the time of his 1955 arrival into India. According to the prevailing definition of the term as in 1955, there were two criteria stipulated for determining who a "foreigner" is: (i) a person who was not a "natural-born" British citizen, as per sub-section (1) and (2) of Section 1 of British-Nationality and Status of Aliens Act, 1914, or (ii) a person who was not given a certificate of naturalisation as a British citizen under any law which was in force in India at that particular point of time, or (iii) who was not an Indian citizen.

The Citizenship Act, 1955, which was enforced on December 30, 1955, was likewise not in existence at the time when the respondent visited India. Article 5(a) fundamentally covers the case of the respondent, who was born and resided in the Indian jurisdiction at the time of the Constitution of India was established. Being an Indian citizen during this period, the respondent will retain his citizenship till his admission into India in 1955, until and unless he lost the citizenship due to some statute which came in force in the period between the inception of the Constitution and the entry of the respondent into India in 1955. There were no significant attempts that had been made by the petitioner which would have aided in establishing the fact that the respondent had retained his Indian citizenship by any other method other than through the acquisition of a Pakistani passport and the decision of theCentral Government's on his citizenship on November 5, 1964.

The counsel for the appellant had based his case entirely on the findings and the decision of the Central Government, which was upheld by the Hon'ble Supreme Court as well. According to the appellant, the Central Government's determination was made under Section 9(2) of the Citizenship Act which is conclusive in nature, and since the respondent was found to have acquired Pakistani citizenship prior to March 15, 1955, his entry into India after that date and overstaying stay in India after the third extended period, which had elapsed on May 22, 1955, would definitely constitute an offence for which he can be penalized under Section 14 of the Foreigners Act.

JUDGEMENT:

In light of these decisions, it seems self-evident that until and unless the Central Government resolved the acquisition of Pakistan nationality of the respondent and the consequent loss of the Indian nationality, he cannot be regarded as a foreigner and no legal liabilities can befall him, merely on the basis of him being a foreign citizen. The appellant had not contended It is not the appellant's position that any directives made to the respondent post November 5, 1964 should be disregarded, thus resulting in his prosecution. *In facto*, it is accepted that he was not even told of the Central Government's decision until March 29, 1965. Additionally, at the time the Central Government decided his nationality, Rehmatullah was being prosecuted in India by a criminal court, which was after he had been detained and subsequently released and was not allowed to leave the country and return to Pakistan. Taking these circumstances into consideration, the broad and the major allegations brought against the respondent were erroneous and that he cannot be held liable and convicted for overstaying in India until he was officially determined to be a Pakistani national and had lost right to be an Indian citizen. The Central Government's ruling is unambiguously conclusive, and it has been uncontested by the respondent even after he was apprised of it on March 29, 1965, reviewed the Central Government's procedures and concluded that the respondent was given ample chances and time to present his case. The Central Government's finding in this instance cannot have the effect of retroactively criminalising a conduct that was not criminal at the time it was committed and is not binding in nature. Even if the defendant was determined to be a Pakistani national and thus a foreigner prior to the accusation being filed against him, he is entitled to the protection of the laws of India.

As a result of the aforesaid arguments, the Supreme Court was of the opinion that the High

Court was correct in vacating the respondent's conviction on the framed charge. However, the Central Government may take any appropriate steps against the respondent under the Foreigners Act or any legal provisions which may apply to him, for deporting or for any other such purposes. This particular appeal was however dismissed by the Court. Ergo, the decision came in favour of Rehmatullah.

CRITICAL ANALYSIS:

Before proceeding into the analysis of the judgement, it is crucial to look into the provisions of citizenship which are applicable today in the world's largest democracy. As per the Citizenship Act, 1955, an individual can acquire citizenship of India via either of the five methods namely: birth, descent, registration, naturalization and through the inclusion of some territory into India. Articles 5 to 11 of the Constitution of India provide that the citizens of India, at the time of the enforcement of the Indian Constitution on January 26, 1950 can be categorized into: Citizenship by domicile, citizenship by migration and citizenship by registration. Specifically, it is under Article 6 of the Indian Constitution, which deals with the migration of people from Pakistan.

Prima facie, it can be seen that the case revolves around whether the Central government does possess the power to legislate as to whether an individual, who is not an Indian citizen and is residing in India, has lost his Indian citizenship by virtue of acquiring the citizenship of another country. The nationality of Rehmatullah and his subsequent overstay in India was a clear example of the same.

It can be clearly inferred from the judgement given by the Supreme Court that the Central government possesses the exclusive jurisdiction to find as to whether an individual, who used to be an Indian citizen, and lost that citizenship post having acquired the citizenship of a "*Foreign State"* out of his own volition whether a person, as according to Section 9(2) of the Citizenship Act[1], read with Rule 30 of The Citizenship Rules, 1956. Furthermore, as per Section 9(2) and Rule 30, merely giving evidence of the fact that the individual possesses the passport of another country will not suffice in order to defend oneself in case s/he is being deported or prosecuted, until and unless the Central government decides as per Section 9(2) of the Citizenship Act. Moreover, the enquiry done by the Central government according to the

[1] The Citizenship Act 1955.

directions stipulated under Section 9(2) is a quasi-judicial enquiry.[2] The veracity of the usage of Section 9 and Rule 30 of the Rules, as stipulated under the Citizenship Act, 1956, have been upheld in *Izhar Ahmad Khan and Ors. v. Union of India and Ors.*[3]

Additionally, it is settled that the question as to whether an individual, who has lost the citizenship India and has become a citizen of a foreign country, has to be tried by the Central Government. Further, it is only after the Central Government has given the decision that State Government can treat the individual as a foreigner. In case, the citizen gets the passport of another country by a citizen and it is categorized under the Rules of Citizenship, then it will be considered that the citizen has *"acquired the citizenship of the foreign country"*[4]. Such a deduction, however, can only be drawn by the appropriate authorities who are given the responsibility to enquire into it by the Act. Ergo, it is indisputable that in those cases where the action is proposed to be undertaken against those individuals who are living in India on the basis that they have become citizens of another country and have given up the Indian citizenship voluntarily, then it is prerogative of the Central Government to look into it. While doing so, it is essential that the Central Government should invoke Rule 3 under Schedule III and look into the matter, keeping in mind the guidelines and the directions laid down by the Act. The decision with respect to the status of the individual are the grounds based on which further steps can be undertaken by the government. In this respect, it is noteworthy that India prohibits dual citizenship.[5]

CONCLUSION:

As stated previously as well, India is regarded as the largest democracy in the entire world, and its culture and diversity attracts people from far and wide. With the coming of the constitution, India resolved to remain a sovereign, secular, socialist and a democratic republic. This essentially means that the people of India are competent and capable of preserving, promoting and adjudicating upon the issues which deal with nationality and through this, aims to provide adequate justice to those who are of Indian origin. The laws which had been formulated post the country gaining its independence have laid down various solutions, with the authority and jurisdiction to interpret such solutions lying in the domain governed by our judiciary and

[2] State of A.P. v Abdul Khader, AIR (1961) SC 1467; Government of A.P. v Syed Md., AIR (1962) SC 1778.
[3] Izhar Ahmed Khan and Ors. v Union of India and Ors., [1962] Supp. 3 S.C.R. 235.
[4] *Ibid*. at 3.
[5] MP Jain, *Indian Constitutional Law* (8th edn, Lexis Nexis 2022).

therefore, ensure that the fundamental freedoms which are encompassed by the Constitution of India are safeguarded.