

Badruzzaman vs The State on 16 August, 1950

Equivalent citations: AIR1951ALL16, AIR 1951 ALLAHABAD 16

ORDER

Misra, J.

1. This is a revision against the appellate decision of the learned Additional Sessions Judge of Rae Bareilly affirming the order of conviction passed against the applicant, Badruzzaman Khan, by a Sub-divisional Magistrate in that district under Section 5(1), Influx from Pakistan Control Act, 1949 (XXIII [23] of 1949). Badruzzaman was originally sentenced to undergo nine months rigorous imprisonment but the lower appellate Court reduced the sentence to one of fine amounting to Rs. 500/- or three months rigorous imprisonment in default of its payment.

2. Section 3, Influx from Pakistan Control Act, prohibits persons not exempted under the Rules framed in pursuance of Section 4 of the Act from entering India from. Pakistan directly or indirectly except under a permit, or valid passport in the case of persons not domiciled in India or Pakistan. Section 4 invests the Central Government with powers to make rules under the Act for prescribing the authorities by which and the conditions subject to which permits may be issued, renewed or extended, laying down the qualifications of persons entitled to them, regulating the movements of permit holders in India and providing for exemptions and other matter, ancillary or incidental for carrying out the purposes underlying the Statute. Section 5 then prescribes:

"(1) Whoever enters India in contravention of the provisions of Section 3, or having entered India contravenes the provisions of any rule made under Section 4, or commits a breach of any of the conditions of his permit, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever, in any statement made by him in pursuance of any of the provisions of this Act or of any rules made thereunder, furnishes any information which is false and which he either knows or believes to be false or does not believe to be true, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

3. Rules 3 and 8 of the Rules framed under Section 4 of the Act make provision for the issue of five kinds of permits by the High Commissioner for India in Pakistan at Karachi or the Deputy High Commissioner at Lahore: (1) Permits for temporary visits, (2) Permits for permanent return to India, (3) Permits for repeated journeys, (4) Transit permits, and (5) Permits for permanent re-settlement.

4. The applicant Badruzzaman lived along with his parents and other members of his family in village Bawan Buzurg alias Balla police station Mahrarajganj, district Rae Bareli. He left his family and the country after the partition for Western Pakistan in May 1948. That was the time, it will be recalled, of a general exodus of Muslim population from India to Pakistan and of non-Muslims from Pakistan to India. Badruzzaman re-entered India on 22-6-1949, on a temporary permit valid upto 19-7-1949 the purpose stated in the permit being "second marriage and fetching his family." Subsequently he secured extensions of the permit upto 7-10-1949. There is evidence to show that the applicant's second wife refused to accompany him to Pakistan and this was one of the factors which led him to stay in India beyond the extended period. His attempts to obtain further extensions or to get himself registered as a citizen of India were unsuccessful with the result that he was arrested on 11-10-1949, and challenged under Sections 5 (1) and 5 (2), Influx from Pakistan Control Act, and convicted and sentenced, as stated above.

5. The accused stated in the trial Court that he did not wish to return to Pakistan, and that he came to India on a temporary permit only because a permanent permit was not available.

6. On behalf of Badruzzaman the following two contentions are raised : (1) That he never lost his Indian nationality, and (2) That he is still an Indian citizen and the rights conferred on him by Article 19(h) of the Constitution cannot be curtailed by the Act.

7. The right to citizenship of India is conferred by Article 5 of the Constitution and every person who, at the commencement of the Constitution, had his domicile in the territory of India or who or whose parents were born in India in Indian territory or who had on that date been ordinarily residing in that territory for not less than five years. According to Article 7, however, notwithstanding the fact that the above conditions were fulfilled, a person who had migrated from India to the territory of Pakistan after 1-3-1947, and did not return to the territory of India under a permit for resettlement or permanent return could not be deemed to be an Indian citizen. Badruzzaman had admittedly gone to Pakistan after the date specified in Article 7 but the question which has been raised for determination on behalf of the applicant is whether his act amounted to migration within the meaning of that article. The expression embraces in its scope two conceptions: (1) Going from one place to another and (2) The intention to make the destination a place of abode or residence in future. In the context of the Constitution, it has the notion of transference of allegiance from the country of departure to the country of adoption. The record shows that the following facts are well established:

(1) Badruzzaman left his home for Pakistan after 1-3-1947.

(2) While in Pakistan he took up service which he lost later (vide EX. J.) (3) He came to India on a temporary visit about thirteen months after his departure.

(4) The purpose for which he avowedly came to India was re-marriage and taking away his family to Pakistan.

(5) Badruzzaman wanted to return to Pakistan but his wife did not agree to accompany him, and (6) His application for re-conferment of the status of an Indian citizen on him was rejected.

7a. Viewed in the background of the great exodus of the Muslim population from Indian territory to Pakistan and of the Hindu population from Pakistan to India and the historical events which led to the partition of the country and the establishment of the two dominions on 15-8-1947--matters which are of common knowledge and of which judicial notice can be taken without specific proof -- the facts proved would undoubtedly indicate that when the applicant left India in May 1948, he did so in order to settle down in Pakistan and to adopt it as his home country. In saying this, I am not unmindful of the various letters Exs. A to L written by him from Pakistan between 15-8-1948 and 16-6-1949, to the members of his family in India. These documents were produced on behalf of the defence and they show that Badruzzaman ardently desired to return to his father and that his efforts to obtain permission for coming to India were at first unsuccessful. It seems to me, however, that much importance cannot be attached to these letters for all that they indicate is an anxiety, which was natural enough in the circumstances of the case, to see the members of his family. They did not affect the nature of his initial move from India to Pakistan which, as stated above, was actuated by the desire to secure a change of nationality and to make Pakistan his country by adoption. The application Ex. M submitted by Badruzzaman to the Chief Minister of the State for conferment on him of Indian citizenship saying that: "Now I do not wish to go back to Pakistan" pre-supposes that he had lost his Indian nationality and he desired to regain it and strengthens the view which I take of Badruzzaman's act in leaving this country. I hold he migrated to Pakistan in 1948. It follows that he is not an Indian citizen and cannot claim the fundamental rights conferred by Article 19 of the Constitution. It is unnecessary in this view to examine the further argument that Act XXIII [23] of 1949, cannot operate to curtail an Indian citizen's right to reside and settle in any part of the territory of India.

8. The sentence is not severe. I dismiss the application. The order, staying realization of fine until the decision of this application, is revoked.