**INTRODUCTION**

* ***The state of Bihar vs Kumar Amar Singh and Others***: -
* Decided on- 10 February 1955
* Equivalent citations-1955 AIR 282, 1955 SCR (1)1259
* Author-B jagannadhadas
* Bench- Das, Sudhi Ranjan, Bhagwati, Natwarlal H., Jagannadhadas, B., Aiyyar, T.L. Venkatarama, Sinha, Bhuvneshwar P.

PETITIONER:

THE STATE OF BIHAR

VS

RESPONDENT:

KUMAR AMAR SINGH AND OTHERS

* This case is regarding the citizenship of India. In Indian constitution citizenship has been deal under Article -5 to Article-12 i.e. under Part-3 of the constitution.

Article -5 to article -8 contains the provision determining the citizenship of India at the commencement of the constitution.

* The following are the person who become the citizen of India at the time of commencement of constitution: -
* Citizenship by domicile (Article-5)
* Citizenship by migrants from Pakistan (Article-6)
* Citizenship of Migrants to Pakistan (Article-7)
* Citizenship of India Abroad (Article -8)
* Citizenship by domicile: -

Citizenship at the commencement of the Constitution At the commencement of this Constitution every person who has his domicile in the territory of India and

(a) who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years preceding such commencement, shall be a citizen of India.

* Citizenship by migrants from Pakistan: -

Rights of citizenship of certain persons who have migrated to India from Pakistan Notwithstanding anything in Article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if:

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b)

(i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948 , he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government: Provided that no person shall be so registered unless he has been resident in the territory of India or at least six months immediately preceding the date of his application.

* Citizenship of Migrants to Pakistan:-

Article -7 of the constitution states that, Notwithstanding anything in article 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 to be deemed to be the 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 authority of any law and every such person shall for the purpose of clause (b) of Article 6 be deemed to have migrated to territory of India after the nineteenth day of July, 1948 .

* Meaning of migration used in Article 6 and Article 7: -

In the case of *Kulathil Mammu vs. the state of Kerala*, the meaning of the word “migration” was negotiated wherein the Supreme court of India was divided in its opinion. The majority of the judges construed that the term migrated used in Article 6 and 7 with reference to the context, purpose and prevailing political conditions at the time of making Constitution. In simple words, they interpret the term as nothing but voluntarily going from India to Pakistan permanently or temporarily. Whereas minorities view was that there must be an element of some permanence in the intention of a person migrating to settle in Pakistan. Since the majority view was broader, it was accepted.

* **FACTS OF THE CASE: -**

Kumar Rani was admittedly born in the territory of India and claims to be the lawfully wedded wife of Captain Maharaj Kumar Gopal Saran Narayan Singh of Gaya by virtue of an alleged marriage between them in 1920 according to Arya Samaj rites and subsequently according to Muslim rites, She owned and possessed considerable properties. In 1946 she created a wakf of her properties consisting of 427 villages for the maintenance and support of herself, her sons and their descendants, by executing a deed of Wakf-ulalAulad dated the 4th May, 1946, by which she divested herself of all her interest in the said properties and vested them in Almighty God. She appointed, herself as the sole mutwalli for her life time or until relinquishment, and her three sons to succeed her as joint mutwallis. The deed also provided that the net income was to be spent for the maintenance of herself and her three sons with the direction that not more than half should be spent by the wakifa for her own use.

In July, 1948, Kumar Rani went to Karachi leaving her husband in India. she argued that her visit was regarding the treatment of diseases. She returned to India in December, 1948, after obtaining a temporary permit. In her application she has declared that she is domiciled in Pakistan and a Pakistani national. She went back in Pakistan in April, 1949. On the 21st June, 1949, the Bihar Administration of Evacuee Property Ordinance, 1949 (Bihar Ordinance No. III of 1949) came into force. The Deputy Custodian of Evacuee Property issued a notification on the 2nd September, 1949, under section-5 of this Ordinance, declaring all the properties comprised in the abovementioned wakf estate to have vested in the Custodian as being evacuee property. He took possession thereof between the 20th September and 2nd October, 1949. On the 14th May, 1950, Kumar Rani again came back to India under a permanent permit obtained from the High Commissioner for India in Pakistan. This permit was, however, cancelled on the 12th July, 1950, by the Deputy High Commissioner, on the ground that this was wrongly issued, without the concurrence of the Government, a.-, required by the rules made under the Influx from Pakistan (Control) Act, 1949. In view of this cancellation, the Sub-Inspector of Police, Gaya, issued notice to Kumar Rani directing her that since her permanent permit had been cancelled, she should leave lndia by the 31st July, 1950.

* Issue of the case:-

Whether she would be citizen of India. She filed two application before High court of Patna. One dated 5, July 1950, challenging the validity of the action taken by the Deputy custodian declaring the wakf estate as evacuee property and taking possession.

In another application dated 28th July,1950, she has challenged the validity of the order of the Sub-Inspector of Police, Gaya, directing Kumar Rani to leave India. The first of these applications was filed by Kumar Rani along with her three sons as petitioners and the second by Kumar Rani alone. In this application she has challenged the order and claimed that she is citizen of India. Now issue arise before High Court of Patna whether she would be Citizen of India or not.

* JUDGEMENT:-

 Both these applications were allowed by the High Court and hence these appeals by the State on leave granted by the High Court.  These two connected appeals came up for hearing be-fore this Court on the 26th and 27th October, 1953. This Court after hearing counsel on both sides was of the opinion that one of the essential facts requisite for a proper decision of Appeal No. 97 had been assumed without investigation and that it was necessary to have a finding thereupon after taking evidence. This Court accordingly re- manded Appeal No. 97 to the High Court to submit a finding and directed that on the receipt of the finding both the appeals i.e. Appeals Nos. 97 and 98 should be heard together. The finding has now been received and the appeals have been re heard. It is necessary at this stage to mention that the advocate who appeared for the respondents in both the appeals at the prior hearing appeared before us at this hearing and stated that he had been instructed to withdraw his appearance in these appeals and to allow the hearing to proceed ex- parte.

It was now convenient to deal with these two appeals separately, since, appeal No.-98 raises fundamental question as to the continuing citizenship of Kumar Rani will be taken up first.

This appeal challenges the order issued by the sub-inspector of police , Gaya. This was challenged on the ground that Kumar Rani was, and throughout continued to be, a citizen of India and that the order dated the 23rd July, 1950, which, in substance, amounted to an order of her externment from India, was in violation of Kumar Rani's fundamental right under Article -19 of the constitution. The contention of Kumar Rani is that though it is a fact that she did go to Pakistan in the year 1948, she went there only for a temporary purpose, viz. for securing the medical treatment of a reputed Hakim and that she was always and continued to be a citizen of India and that, therefore, the High Commissioner for India in Pakistan had no power to cancel the permit issued to her. As regards her allegation that when she first went to Karachi in July, 1948, she did so temporarily for the purpose of medical treatment, the learned Judges of the High Court were not inclined to accept her story. But, all the same, they held that she was and continued to be a citizen of India, on the ground that she was born in India and that her domicile continued to be that of her husband, Captain Maharaj Kumar Gopal Saran Narayan Singh, who, it is not disputed, throughout continued to be in India. The learned Judges of the High Court apparently had Article -5 which give citizenship by the birth. Also she refers the English law that the wife's domicile continues throughout to be that of her husband during the continuance of marriage.

It was argued that learned judge of High Court completely overlooked Art-7. The relevant portion of Art-5 states that "At the commencement of this Constitution, every person who has his domicile in the territory of India and who was born in the territory of India shall be a citizen of India". In the view of the High Court since Kumar Rani was born in India and bad the Indian domicile of her husband, she was a citizen of India.

But Article -7 states that Notwithstanding anything in article-5, 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". There is a proviso to this article which will be noticed presently. But before noticing the proviso and its effect, it is necessary to mention the following facts which may be taken to have been made out on the record. (1) Kumar Rani went to Karachi in July, 1948. (2) Her story that she went there temporarily for medical treatment has been doubted by the High Court and appears to us to be unfounded. (3) When she came to India in December, 1948, she did so on a temporary permit stating in her application for the said permit that she was domiciled in Pakistan and accordingly representing herself to be a Pakistani national. (4) She went back to Pakistan in April, 1949, on the expiry of that temporary permit. (5) She made an attempt to obtain a permit for permanent return to India only after steps had been taken to vest the property in the Custodian and after the same was taken possession of. There can be no doubt on these facts that she must be held to have migrated from the territory of India after the 1st March, 1947. Even if therefore article can be said to be applicable to her on the assumption that Captain Narayan Singh was her husband and that her domicile was that of her husband, the facts bring her case under article -7.Article-7 clearly overrides article-7.It is peremptory in its scope and makes no exception for such a case, i.e., of the wife migrating to Pakistan leaving her husband in India. Even such a wife must be deemed not to be a citizen of India unless the particular facts bring her case within the proviso to article-7.

This proviso is as follows:-

"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".

She argued on the basis of the proviso that since, she has returned to the territory of India under a permanent permit, she is entitled to the benefit and subsequent cancellation of said permit is both illegal and irrelevant. Rule 10 of the Permit System Rules, 1949, framed by the Central Government under section-4 of the Influx from Pakistan (Control) Act, 1949, provides that a permit for permanent resettlement in India may be granted by the High Commissioner or Deputy High Commissioner only after securing the agreement of the State or the Province where the applicant intends to settle. Rule 29 provides that every permit issued under the rules shall be liable to cancellation at any time, without any reason being assigned by the issuing authority. In the present case, the permit has been cancelled in a reasoned order on the ground that, on the facts of the case, the consent of the State Government concerned should have been obtained before the permit could be issued. This is a case, therefore, not of a valid permanent permit having been issued and the permit holder returning to India on the strength thereof and the same having been arbitrarily cancelled. It is a case of an unauthorised issue of an invalid permit which has been properly cancelled. Hence the proviso to article-7 can have no possible application. The applicant, is, therefore, not a citizen of India and the order passed by the Sub-Inspector of Police, Gaya, dated the 23rd July, 1950, directing Kumar Rani to leave India was accordingly valid. This appeal must therefore succeed.

The court ruled that since she has migrated to Pakistan after first day of march ,1947. She is not the citizen of India.