

Najib Khan vs State Through D.M. on 27 January, 1954

Equivalent citations: 1954CRILJ962

Author: V. Bhargava

Bench: V. Bhargava

ORDER

V. Bhargava, J.

1. By this petition under Article 228 of the Constitution the petitioner seeks the issue of a writ, order or direction to the opposite party, the State of Uttar Pradesh, in the nature of certiorai and/or mandamus and/or prohibition so that the petitioner, may not be deported to Pakistan.

2. It appears from the petitioner's own affidavit that he went to Pakistan some time in the year 1948 before the permit system was introduced between India and Pakistan regulating movement of persons from one country to the other. Thereafter the petitioner was unable to return to India for a month. He, however, obtained a temporary permit and returned to India. The period of that temporary permit lapsed and thereafter the petitioner was prosecuted under the provisions of the Influx from Pakistan (Control) Ordinance, 1948 and was convicted and fined. Proceedings are now being taken to arrest the petitioner in order to deport him to Pakistan. The proceeding's for deportation are challenged on the allegation that, the petitioner is a citizen of India and consequently Section 7 of the Influx from Pakistan (Control) Act cannot be applied to him.

The question whether the petitioner is or is not a citizen of India is a question of fact. The petitioner contends that he is still a citizen of India, and he never migrated from India. His case in the affidavit is that he left for Pakistan because his sister's son was one of the refugees who left for Pakistan and the petitioner learnt that that young boy was crying for the petitioner so that the petitioner left in search of the boy.

On behalf of the opposite party it is alleged that the petitioner had migrated to Pakistan. As against the affidavit of the petitioner that he went to Pakistan without any intention of settling down and taking his family there are several circumstances. Firstly, the petitioner was prosecuted under the Influx from Pakistan (Control) Ordinance of 1948 and in that case the trial Court came to the finding that the petitioner had migrated to Pakistan. Secondly, when the petitioner came back to India under a temporary permit, he applied in the capacity of a person who had migrated from India. Further, the petitioner has moved for his permanent resettlement in India in Form C prescribed for the purpose by the rules made under the Influx from Pakistan (Control) Act. . In that form O an application can be presented by only such a person as has already migrated to Pakistan. In thus

making an application in that form, the petitioner has declared that he is a person who had migrated from India to Pakistan.

Such being the circumstances it is not possible to accept the petitioner's contention that he never migrated from India. Evidence cannot be recorded and the question cannot be gone into in detail in these proceedings under Article 226 of the Constitution. The criminal court has already examined the position and if the petitioner thinks that he has a remedy in civil court he can move the civil court for a decision on this question. So far as this writ petition is concerned, it has to be decided on the basis that the petitioner has failed to satisfy the Court that he had not migrated from India. Further, there is no assertion that after migration, the petitioner again acquired Indian citizenship in accordance with the proviso to Article 7 of the Constitution. It must, therefore, be held for the purpose of this petition that the petitioner is not an Indian citizen, Consequently Section 7, Influx from Pakistan (Control) Act is applicable to him and no writ can be issued restraining the opposite party from deporting him.

3. The petition is dismissed. The stay order dated 25-8-1952 is vacated.