

PETITIONER:
GANGADHAR YESHWANT BHANDARE

Vs.

RESPONDENT:
ERASMO DE JESUS SEQUIRIA

DATE OF JUDGMENT 04/02/1975

BENCH:
KHANNA, HANS RAJ
BENCH:
KHANNA, HANS RAJ
BHAGWATI, P.N.
SARKARIA, RANJIT SINGH

CITATION:
1975 AIR 972 1975 SCR (3) 425
1975 SCC (1) 544

ACT:

Goa, Daman and Diu Citizenship Order, 1962--cl. 3A--Passport issued by, a foreign country to be surrendered before a certain date--Government specifically asked a citizen not to surrender foreign passport--Services of citizen used in a top secret mission--Whether retention of foreign passport deprived him of Indian Citizenship.

HEADNOTE:

Clause (2) of the Goa, Daman and Diu (Citizenship) Order, 1962 states that every person who or either of whose parents was born before the 20th day of December, 1961 in the territories now comprised in the union territory of Goa, Daman and Diu shall be deemed to have become a citizen of India- on that day. The proviso to that clause says that any such person shall not be deemed to have become a citizen of India as aforesaid if within one month, from the date of publication of the order that person makes a declaration in writing that he chooses to retain the citizenship or nationality which he had: immediately before the 20th day of December, 1961. In December 1962 clause (3A) was inserted in Schedule 3 to the Citizenship Rules which states that where a person who has become an Indian citizen by virtue of the 1962 Citizenship Order holds a passport issued by the Government of any other country the fact that he has not surrendered the said passport on or before January 19, 1963 shall be conclusive proof of his having voluntarily acquired the citizenship of that country before that date.

In his election petition the appellant alleged. that the respondent chose to maintain his Portuguese nationality and citizenship by making a declaration in writing on April 27, 1962. Thereafter, he proceeded on foreign travel as an alien on the basis of the Portuguese passport issued to him by the former Portuguese administration. which was renewed upto July 17, 1964 in London. It was further alleged that the respondent obtained his alien residential permit in India and that he deliberately failed to surrender his Portuguese passport before January 19, 1963 as required by cl. 3A of the Amending Rules, 1962. It was also alleged that the communication of the Goa administration that the respondent had prima facie become a citizen of India by

virtue of the Citizenship, Order was not correct and contrary to the documentary evidence.

The Judicial Commissioner held (i) that the respondent was entrusted with, a secret mission on behalf of the Government of India and it was in that connection that he was made to sign the declaration dated April 27, 1962 and that the declaration was not made voluntarily; (ii) that the renewal of the Portuguese passport did not imply loss of Indian citizenship; (iii) that the retention of the Portuguese passport after January 19, 1963 was due to compelling reasons and that the Government of India must be deemed to have given its decision that the respondent was an Indian citizen.

Dismissing the appeal to this Court,

HELD : (1) According to the Special Adviser to the Military Governor who later became Special Adviser to the Lt. Governor, the declaration of the respondent dated April 27, 1962 that he chose to retain the Portuguese citizenship and nationality was signed by him only by way of formality in view of the fact that the Special Adviser had decided to use the respondent in a top secret matter relating to the security of India. The respondent was involved with a Portuguese lady and that fact provided a cover for carrying out the assignment. The respondent retained his Portuguese passport and obtained residential permits to stay in Goa as a foreigner till January, 1964

426

at the instance of the Special Adviser so that he could carry out the assignment entrusted to him. He had gone abroad in 1963 in connection with the assignment on a Portuguese passport under the instructions of the Special Adviser. The respondent renewed the Portuguese passport in London under instructions of the Special Adviser. On respondents return he was asked by the Special Adviser to retain his passport till such time as it was decided to use him again or asked him to relinquish it. The Special Adviser was competent to ask the respondent to retain his Portuguese passport and to proceed on top secret assignment. [431 E-H]

(2) The words "as agreed" appearing on the letter dated April 27, 1962 addressed by the respondent to the Special Adviser go to show that it was in pursuance of some arrangement between the Special Adviser and the respondent, that the latter was retaining his Portuguese passport and visiting Portugal. The note made by the Special Adviser expressly refers to the fact that the respondent after returning from his foreign trip was to take over an Indian passport and renounce Portuguese nationality. No express reference to the secret mission, in the very nature of things, could be expected either in the letter or in the note. it was obviously essential for the success of the secret mission that things should not be divulged by making them explicit. [433G-H]

(3) No question of sharing of the expenses of the respondent would arise if the respondent was not undertaking a trip for reasons connected with the affairs the State. [434A]

(4) The evidence on record proves that the respondent was entrusted with a secret mission on behalf of the Government of India and it was in that connection that he was made to sign the declaration dated April 27, 1962. The intention of the respondent at the time he signed the declaration was not to become a Portuguese national but to acquire Indian nationality. [434D]

(5) The declaration dated April 27, 1962 and the retention

of the passport by the respondent after January, 1963 could not have the effect of depriving the respondent of the benefit of Indian citizenship. But for the declaration dated April 27, 1962 the respondent according to cl. (2) of the Citizenship Order would be deemed to have become a citizen of India on December 20, 1961. The declaration was signed by him because of the secret mission which had 'been entrusted to him in connection with the affairs of the State. It cannot, therefore be said that the choice to retain Portuguese nationality as expressed ,in his declaration dated April 27, 1962 and January 19, 1963 represented his real choice exercised by him voluntarily. [435D; 434H; 435A-B]

(6) The Judicial Commissioner was right in considering the declaration dated April 27, 1962 and the letter dated July 27, 1970 from the Ministry of Home Affairs that he had become prima facie a citizen of India as a certificate issued by the Central Government under s. 13 of the Citizenship Act. It is also plain that the Central Government reaffirmed its decision that the respondent had prima facie become a citizen of India in spite of the fact that the Central Government was informed about the making of declaration dated April 27, 1962. Letters dated July 26, 1970 and July 27, 1970 though they did not profess to be certificates issued under s. 13 and though the latter of these two letters recites that there was no necessity of a certificate, clearly incorporate the view of the Government of India that the respondent was an Indian citizen. [437G; C; 438C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 991 of 1973. From the judgment and order dated the 16th March, 1973 of the , , Court of Judicial Commr., Goa Daman & Diu in Election Petition No. 1 of 1971.

V. R. Bhandare, V. N. Ganpule and Urmila Sirur, for the appellant.

A. K. Sen and S. R. Agrawala, for the respondent.

427

The Judgment of the Court was delivered by KHANNA, J.-The short question which arises for determination in this appeal against the judgment of the Judicial Commissioner Goa, Daman & Diu dismissing petition filed by Gangadhar Yeshwant Bhandare appellant to question the election of Erasmo De Jesus Sequiria respondent to the Lok Sabha is whether the said respondent at the relevant time was a citizen of India.

The respondent was declared elected to the Lok Sabha from the Moraugao parliamentary constituency in the elections held in March 1971. The appellant who had been validly nominated as a candidate at the election for the above constituency withdrew his candidature and did not contest the said election. After the result of the election had been declared, the appellant filed election petition to have the election of the respondent declared void on the ground that on the date of the election the respondent was not qualified to be chosen to fill a parliamentary seat under the Constitution of India and the Representation of the People Act, 1951 as the respondent on that date was not a citizen of India and not an elector as contemplated by the Representation of the People Act, 1951. According to the appellant, prior to December 20, 1961 when the Union Territory of Goa, Daman & Diu was liberated from the

Portuguese domination and became a part of the Indian Union the said territory was a Portuguese possession and the respondent was Portuguese citizen. Following the liberation and merger of that territory with the Union of India, the Government of India in exercise of the powers conferred by section 7 of the Citizenship Act, 1955 issued on March 28, 1962 Goa, Daman and Diu (Citizenship) Order, 1962 (hereinafter referred to as Citizenship Order) conferring the citizenship of India on persons born in the above mentioned territory before December 20, 1961 on the terms and conditions set out in the order. The relevant part of clause 2 of that order was as under :

"Every person who or either of whose parents, or any of whose grand parents was born before the twentieth day of December 1961 in the Territories now comprised in the Union Territory of Goa, Daman and Diu shall be deemed to have become a citizen of India on that day.

Provided that any such person shall not be deemed to have become a citizen of India as aforesaid if within one month from the date of publication of this Order in the Official gazette that person makes a declaration in writing to the Administrator of Goa, Daman and Diu or any other authority specified by him in this behalf that he chooses to retain the citizenship or nationality which he had immediately before the twentieth day of December, 1961;"

It is stated that the respondent chose to maintain his Portuguese nationality and citizenship by making a declaration in writing dated April 27, 1962 as required by the above clause. The respondent thereafter proceeded on foreign travel as an alien on the basis of a Portuguese passport issued to him on or about June 25, 1958 by the 428

former Portuguese Administration. As the said passport was due to expire on June 21, 1962 the respondent on arrival in London in June 1962 applied to the Portuguese Consul in London for a new Portuguese passport which was granted to him on June 18, 1962. The new passport was valid up to June 17, 1964. The respondent returned to India in October 1962 and as an alien applied for and obtained residential permit in India, The permit was renewed from time to time.

On December 20, 1962 the Central Government published the Citizenship (Amendment) Rules, 1962 and inserted in Schedule III to the Citizenship Rules, 1956 clause 3A which reads as under:

"3-A. Where a person, who has become an Indian citizen by virtue of the Goa, Daman and Diu (Citizenship) Order, 1962 or the Dadra and Nagar Haveli (Citizenship) Order, 1962, issued under section 7 of the Citizenship Act, 1955 (57 of 1955), holds a passport issued by the Government of any other country, the fact that he has not surrendered the said passport on or before the 19th January, 1963 shall be conclusive proof of his having voluntarily acquired the citizenship of that country before that date."

It is stated by the-appellant that the respondent deliberately failed to surrender his Portuguese passport before January 19, 1963 as required under the above, clause. In January 1964 the respondent returned his Portuguese

passport to the Special Officer, Ministry of External Affairs and claimed Indian citizenship. No reference was made in that communication by the respondent, to the fact that he had made, a declaration retaining his Portuguese citizenship. On December 15, 1964 a letter was sent on behalf of the Administration of Goa, Daman and Diu to the respondent stating that prima facie he had become a citizen of India by virtue of the Citizenship Order. In July 1970 the respondent addressed a communication to the Central Government for a certificate under section 13 of the Citizenship Act. In response to that the respondent was informed by letter dated July 27, 1970 that the said certificate was not necessary for him as the Goa Administration had already conveyed to him that he was prima facie an Indian citizen. The appellant asserts that the information conveyed to the respondent by the Goa Administration in letter dated December 15, 1964 was not correct and contrary to documentary evidence. An objection was raised at the time of scrutiny by the appellant that the respondent was not a citizen of India but that objection was overruled by the Returning Officer. The appellant accordingly prayed that the election of the respondent to the Lok Sabha be declared to be void.

The respondent in his written statement stated that the declaration filed by him on April 27, 1962 was not a valid declaration inasmuch as he did not choose to retain his Portuguese nationality and citizenship. The said declaration was stated to have been made by the respondent at the request of the then Special Adviser Goa for reasons which had no connection with any intention on his part to retain the Portuguese nationality and citizenship or to lose Indian

429

citizenship. The respondent admits that he left India in May 1962 and got his passport renewed from the Portuguese Consulate in London. The respondent was, however, advised by his friends not to go to Portugal and consequently he did not go there. The respondent, it is further stated, was told by the Special Adviser to continue to retain the Portuguese passport so that he might be in a position to make a later trip to Portugal. According further to the respondent, he applied for a residential permit and kept renewing it from time to time as a matter of formality and with the full knowledge of the Special Adviser that the respondent did not intend to jeopardize his Indian citizenship. When clause 3A in Schedule III to the Citizenship Rules was added, the respondent addressed a letter to the Special Officer, Ministry of External Affairs to the effect that he was retaining for the time being the Portuguese passport and that his object was to obtain Indian passport in due course. The respondent thereafter surrendered his Portuguese passport on January 15, 1964. The respondent, it is further stated, obtained a passport as a citizen of India from the Government of India through the Chief Secretary, Goa, Daman and Diu in 1965. Another passport was obtained by the respondent in that capacity in 1970. According to the respondent, letter from Goa Administration dated December 15, 1964 and letter dated July 27, 1970 from the Government of India are, conclusive on the point that he was a citizen of India. Objection was also raised by the respondent that clause 3A of Schedule III to the Citizenship Rules and the first proviso to clause 2 of Citizenship Order were ultra vires the, Citizenship Act. According to the respondent, he was a citizen of India at the relevant time and his election was not liable to be

declared void on the ground set up by the, appellant. It may be stated that the appellant impleaded besides the respondent, the Returning Officer and the Union of India as respondents 2 and 3 respectively in the election petition. Respondent No. 2 was, deleted from the list of respondents on July 31, 1971 on an application filed by the appellant. So far as the Union of India respondent No. 3 is concerned, the said respondent was deleted from the list of respondents on the application of the appellant on February 3, 1972 after some preliminary issues had been decided on October 15, 1971. A written statement was filed on behalf of the Union of India.

According to the Union of India, the respondent signed declaration, dated April, 1962 not voluntarily but on the advice and at the instance of the Special Adviser Goa. As regards the residential permits which were granted to the respondent, the Union of India states that those permits were issued with a view to avoiding any complication as the respondent held a Portuguese passport for reasons connected with the affair of the State. The Union of India has denied that the respondent acquired the Portuguese citizenship or that he ceased to be an Indian citizen. According to the Union of India, the respondent is an Indian citizen. Indian passports are stated to have been issued in favour of the respondent because of his being an Indian citizen.

13--423SCI/75

430

Following issues were framed by the learned Judicial Commissioner :

1. "Has this Court jurisdiction to entertain the election petition?
2. Is the petitioner a citizen of India?
3. Did the petitioner comply with the provisions of section 81(3) of the Representation of the People Act, 1951 and if not, is the petition fit to be dismissed under section 86(1) of that Act?
4. Whether the first proviso to para 2 of the Goa, Daman and Diu (Citizenship) Order, 1962 is ultra vires and in excess of the powers conferred by section 7 of the Citizenship Act, 1955?
5. Was the first respondent disqualified to be chosen as a member of the Lok Sabha in March 1971 for the reasons stated by the petitioner in the election petition?
6. To what relief?"

Issues 1, 2 and 4 which were treated as preliminary issues were decided in favour of the appellant and against the respondent as per order dated October 5, 1971. Issue No. 3 was also decided in favour of the appellant. On issue No. 5 the learned Judicial Commissioner held that the respondent was entrusted with a secret mission on behalf of the Government of India and it was in that connection that he was made to sign declaration dated April 27, 1962. The said declaration was not made voluntarily. The renewal of Portuguese passport by the respondent, it was held, did not imply the loss of Indian citizenship. The retention of the Portuguese passport by the respondent after January 19, 1963 was found to be due to compelling reasons. In the opinion of the Judicial Commissioner, the Government of India must be deemed to have given its decision that respondent was an Indian citizen. The respondent was accordingly held not qualified to be chosen as a member of the Lok Sabha. the

election petition was dismissed.

In appeal before us Mr. Bhandare on behalf, of appellant has challenged the finding of the judicial Commissioner that the respondent did not sign declaration dated April 27, 1962 voluntarily and that it was in connection with a secreta that entrusted to him on behalf of the Government of India that he has made to sign that declaration. It is urged that the respondent was not an Indian citizen at the relevant time, and as such was not qualified to be chosen to fill a seat in the Parliament We have given our careful consideration to the submission of Mr. Bhandare are though we agree with him that as provided in article 84 of the constitution a person shall not be qualified to be chosen to fill a seat in Parliament unless he is a citizen of India, we find it difficult to accept his other contentions.

431

Ex. P3 is declaration dated April 27, 1962 which, according to the appellant, was made by the respondent voluntarily. The declaration read as under

Panjim

dated 27th April 1962

The Sr. Superintendent of Police, Goa

Panjim

Sir,

I ERASMO JESUS DE SEQUEIRA aged 23 years resident at CAMPAL, PANJIM declare that I have carefully read the order passed by the Military Governor on the 5th of April, 1962 regarding the declaration of Nationality. I have also carefully perused the Notification of the Govt. of India dated 28th March, 1962 which is an order called 'Goa, Diu and Daman Citizenship Order 1962'. I accordingly declare that I choose to retain the PORTUGUESE citizenship Nationality which I was holding immediately before the 20th of December, 1961. I, therefore, herein sign my declaration, declaring my PORTUGUESE citizenship..... Nationality.

Sd/Erasmio Jesus De Sequeira

Signature

The learned Judicial Commissioner has found that the above declaration was made by the respondent not voluntarily and that he was made to sign it in connection with a secret mission entrusted to him on behalf of the Government of India. The finding of the Judicial Commissioner in this respect is supported by the evidence of Mr. G. K. Handoo who was appointed in December 1961 as a Special Adviser to the Military Governor of Goa and who was thereafter appointed in March 1962 Special Adviser to the Lt. Governor. Before that Handoo was Additional Inspector General of Police, Maharashtra and Commandant of the Border Security Force of Goa, Daman and Diu. He had also been dealing with foreign intelligence and security of Goa in the Ministry of External Affairs. According to Handoo, declaration Ex. P3 was signed by the respondent only by way of formality in view of the fact that Handoo had decided to use the respondent in a top-secret matter relating to the security of the Government of, India. The respondent, it is stated, was involved with a Portuguese lady and that fact provided a cover for carrying out the assignment. Handoo has further stated that the respondent retained his Portuguese. passport and obtained residential permits to stay in Goa as a foreigner fill January 1964 at the instance of Handoo' so that the

respondent. could carry out the assignment entrusted to him. It is also stated by Handoo that the respondent went abroad in 1962 in 'connection with the assignment on a Portuguese passport under the instructions of Handoo. The expenses for the above foreign trip of the respondent were, shared by the Government of India and the respondent. It is further in the evidence of Handoo that the respondent renewed his Portuguese passport in London under the instructions of

432
the witness. On his return the respondent contacted Handoo. Handoo then told the respondent to retain his passport till such time as Handoo decided to use him again or asked him to relinquish it. Handoo adds that he was competent to ask the respondent to retain his Portuguese passport and to proceed on top-secret assignment. It is also in the evidence of Handoo that the respondent addressed letter Ex. P4 to Handoo on April 27, 1962. The letter reads as under:

CAMPAL
PANJIM

27th APRIL, 1962

CONFIDENTIAL

Mr. G. K. HANDOO
SPECIAL ADVISER
GOA

DEAR MR. HANDOO:

Confirming my call on you this morning, 1, as agreed, write to advise you that I wish to retain my Portuguese passport No. '703/58 issued at Goa for the present, to enable me to visit Portugal and see a very personal friend on a highly personal reason.

I request that permission be granted for me to leave India on this passport, and. would appreciate a reentry permit valid for six months being granted at the same, time.

I am, as advised by you, registering my passport at the police, and I shall be seeing you to hand over this letter, immediately after.

With compliments,

Yours sincerely,
Sd/-

Erasmio Jesus de Sequeira"

On above letter Handoo recorded a note meant for Joshi who was incharge of Passport Section at Panjim. The note reads as under

"Please see. I had spoken to you about this. The applicant has to go back to Portugal with reference to his entanglement with a white Po lady and has to finally settle this domestic issue and return. He- will, then take over an Indian passport which can be issued as he will renounce Portuguese nationality. Please issue him a reentry permit as desired at' A above."

The statement: of the respondent when he came into the witness-box is similar to that of Handoo. The learned Judicial Commissioner has accepted the evidence adduced on behalf of the respon-

433

dent in this. respect, and we see no particular reason to disbelieve the same.

Handoo was a senior officer who dealt with foreign intelligence and security of Goa. At the relevant time he was Special Adviser to the Lt. Governor. So far as the

present proceedings of the election petition are concerned, he is wholly disinterested and there appears to be no cogent ground whatsoever as to why he should give false evidence in favour of the respondent. As regards the respondent, we find that he was subjected to lengthy and searching cross-examination lasting for 11 days. The learned Judicial commissioner has commended the demeanour of the respondent in the witness-box and has observed that the respondent's clear, unhesitating and firm answers impressed him for the truthfulness. According to the Judicial Commissioner, the evidentiary value of the respondent's statement, instead of being weakened, was fortified as a result of cross-examination. This Court in an election appeal normally does not interfere with the appraisal of the evidence of the witnesses by the High Court unless such appraisal is afflicted with some glaring infirmity. After having been taken through the evidence of Handoo and the respondent, we find no reason whatsoever to take a view different from that taken by the Judicial Commissioner regarding the trustworthiness of the two witnesses.

Mr. Bhandare has drawn our attention to the suggestion which was put in cross-examination to the respondent that he was being helped by the ruling party at the Centre in the matter of his citizenship and the present election petition because of the support lent by him to the ruling party since 1969. The respondent repudiated this suggestion and we find that apart from this bare suggestion in cross-examination there is no other material on the record to show that the suggestion was well-founded. We further find that Handoo retired from Government service and did not hold any official position after November 1962. His evidence in the present proceedings was recorded on commission in August 1972.. Handoo being no longer in Government service at the time of the recording of his evidence, it is not clear as to how he could be influenced by the party in power at the Centre to give evidence in favour of the respondent. The evidence of the respondent and Handoo is also borne out by the letter which was addressed by the respondent to Handoo on April 27, 1962 and the note made on that letter by Handoo. The words "as agreed" in the above letter go to show that it was in pursuance of some arrangement between Handoo and the respondent that the latter was retaining his Portuguese passport and visiting Portugal. The note which was made by Handoo expressly refers to the fact that the respondent after returning from his foreign trip was to take over an Indian passport and renounce Portuguese nationality. No express reference to the secret mission in the very nature of things could be expected either in the letter or in the note. It was obviously essential for the success of the secret mission that things should not be divulged by making them explicit.

The evidence of the respondent and Handoo also shows, that the expenses for the foreign trip of the respondent were borne partly by,

434

The Government and, partly by the respondent. No question of sharing of those expenses by the Government would arise if the respondent was not undertaking that trip for reasons connected with the affairs of the State as alleged by the respondent.

While dealing with the question as to what Value should be attached to the evidence adduced by the respondent, we must also bear in mind the written statement which has been) filed on behalf of the Union of India. According to the stand taken by the Union of India, declaration dated, April

27, 1962 was not signed by the respondent voluntarily but on the advice and at the instance of the Special Adviser Goa. The Union of India has further stated that the residential permits were granted to the respondent with a view to prevent any complication as the respondent held a Portuguese passport for reasons connected with the affairs of the State. Looking to all the facts, we agree with the learned Judicial Commissioner that the evidence on record proves that the respondent was entrusted with a secret mission on behalf of the Government of India and it was in that connection that he was made to sign declaration dated April 27, 1962. We also see that the intention of the respondent at the time he signed the declaration was not to become a Portuguese national but to acquire Indian nationality and citizenship.

The evidence of Handoo and the respondent also establishes that it was at the instance of Handoo in connection with the secret mission entrusted to him that respondent travelled on a Portuguese passport in 1962 and obtained on the expiry of his passport a fresh passport from Portuguese Consulate in London in June 1962. The evidence further establishes that it was for the same reason that the respondent did not surrender his Portuguese passport on or before January 19, 1963 in accordance with clause 3A inserted in Schedule III to the Citizenship Rules, 1956. The same was the reason, according to that evidence, for the stay of the respondent in Goa as a foreigner on residential permits till January 1964.

It has next been argued by Mr. Bhandare that whatever might be the reason which might have weighed with the respondent in making declaration P3 dated April 27, 1962 regarding his Portuguese nationality and the retention of the Portuguese passport till after January 19, 1963 the law must take its course and the court should give effect to the proviso to clause 2 of the Citizenship Order and clause 3A of Schedule III to the Citizenship Rules, 1956. In accordance with the above provisions, the respondent, it is urged, should be held to be a Portuguese citizen and not an Indian citizen. We are unable to accede to the above submission. The respondent was admittedly born before the 20th day of December 1961 in the Union Territory of Goa, Daman and Diu. As such, but for declaration P3 signed by him, he would according to clause 2 of the Citizenship Order be deemed to have become a citizen of India on the 20th day of December 1961. Question then arises as to what is the effect of declaration P3 made by the respondent on April 27, 1962 and the retention of the Portuguese passport by him after January 19, 1963.

435

We have found above that even though the respondent wanted to become an Indian citizen, he signed declaration P3 and retained the Portuguese passport till January 1964 because of the secret mission which had been entrusted to him in connection with the affairs of the State. It cannot, therefore, be said that the choice to retain Portuguese nationality as expressed in declaration P3 as well as the choice to retain the Portuguese passport after January 19, 1963 represented the real choice of the respondent exercised by him voluntarily and of his free volition. On the contrary it was because of the necessity and the compulsive reason of ensuring the success of the secret mission entrusted to him in connection with the affairs of the State that the respondent signed declaration P3 and retained the Portuguese passport till after January 19, 1963. The evidence on record establishes that declaration P3 was a

sham declaration which did not embody the real intention or choice of the person signing it. It was not intended to be acted upon and was signed at the instance of a senior officer acting on behalf of the Government of India because it was considered to be a necessary camouflage and cover to facilitate the carrying out of the secret mission entrusted to him in connection with the affairs of the State. The same was reason for the retention of the Portuguese passport by the respondent after January 1963. As such, declaration P3 and the retention of the pass-port by the respondent after January 1963 cannot have the effect of depriving the respondent of the benefit of Indian citizenship. It would indeed look anomalous if a declaration signed in the above circumstances were to result in the evil consequence of the respondent being denied the right to become an Indian citizen. We may observe that once a declaration like P3 is signed by a person and he retains a Portuguese passport after the due date, the onus would be very heavy upon him to prove that the declaration was not signed by him voluntarily and that the retention of the Portuguese passport by him was also not a voluntary act. Unless he discharges that onus by clear and cogent evidence, the law would take its course and he would not be regarded an Indian citizen. Where, however, as in the present case the person concerned discharges that onus and it is established by clear and cogent evidence that the real choice and intention of the person concerned was to become an Indian national and that he signed the declaration and retained the passport because of the compulsion of a secret assignment entrusted to him in connection with the affairs of the State, he cannot be deprived of his entitlement to Indian citizenship.

We may in the above context refer to the case of Mohd. Ayub Khan v. Commissioner of police, Madras & Anr.(1) This in that case was dealing with paragraph 3 of Schedule III to the Citizenship Rules, 1956 which raises a conclusive presumption that a citizen of India who has obtained a passport from a foreign country on any date, has before that date voluntarily acquired citizenship of that other country. Referring to that paragraph this Court observed

"BY the application of the rule in Paragraph 3 the authority must regard obtaining of a foreign passport on parti-

(1) (1965) 2 S.C.R. 884.

436

cular date :as conclusive proof that the Indian citizen has voluntarily acquired citizenship of another country before that date. But obtaining of a passport of foreign country cannot in all cases merely mean receiving the passport. If a plea is raised by the citizen that he had not voluntarily obtained the passport, the citizen must be afforded an opportunity to prove that fact. Cases may be visualized in which on account of force a person may be compelled or on account of fraud or misrepresentation he may be induced, without any intention of renunciation of his Indian citizenship, to obtain a passport from a foreign country. It would be difficult to say that such a passport is one which has been 'obtained' within the meaning of Paragraph 3 of Sch. III and that a conclusive presumption must arise that he has acquired voluntarily citizenship of that country:"

The learned Judicial Commissioner has held that letter R3 dated July 27, 1970 taken along with other documents should be construed as a certificate issued by the Government under section 13 of the Citizenship Act. The above finding has been assailed by Mr. Bhandare. In this connection we find that according to section 13 of the Citizenship Act, the Central Government may, in such cases as it thinks a, certify that a person, with respect to whose citizenship of India a doubt exists, is a citizen of India- and a certificate issued under this section shall, unless it is proved that it was obtained, by means of fraud, false representation or concealment of any material fact, be conclusive evidence that that person was such a citizen on the date thereof, but without prejudice to any evidence that he was such a citizen at an earlier date. The respondent, as mentioned earlier, surrendered his Portuguese passport on January 15, 1964. While surrendering his passport, the respondent wrote letter dated January 15, 1964 to the Special Officer, Ministry of External Affairs claiming Indian citizenship. The Ministry of External Affairs then referred the matter to the Senior Superintendent of Police Panjim. The statement of the respondent was then recorded by the police and the Senior Superintendent of Police thereafter made a report. A report was then sent to the Ministry of External Affairs by the Chief Secretary, Government of Goa, Daman and Diu. A letter was thereafter sent on, behalf of the Ministry of External Affairs on December 2, 1964 to the said Chief Secretary stating that in view of the information supplied by the Chief Secretary, there was no objection to the respondent being treated as a citizen of India under the Citizenship Order. On December 15, 1964 a communication was sent to the respondent by the Under Secretary, Home Department of the Government of Goa, Daman and Diu that prima facie the respondent had become a citizen of India by virtue of the Citizenship Order. More than four and a half years thereafter on July 1, 1969 the Inspector General of Police addressed a letter to the Chief Secretary, Government of Goa, Daman and Diu that the respondent had made declaration P3 dated April 27, 1962 choosing to retain Portuguese citizenship and that this fact had not been brought to the notice of the Government before letter dated December 15, 1964 was issued to the

4 37

respondent that he had prima facie become a citizen of India. The Chief Secretary thereafter a letter to the Ministry of Home Affairs and informed the Additional Secretary in that Ministry about the making of the above declaration by the respondent. There was then further correspondence between the Government of India and the Government of Goa, Daman and Diu. On July 26, 1970 the Joint Secretary to the Government of India, Ministry of Home Affairs addressed letter P52 to the respondent that the matter regarding his claim to Indian citizenship had been reconsidered and it had been decided that the matter should be treated as closed. The Government of India thus reaffirmed its decision which had been conveyed to the respondent in 1964 that the respondent had become prima facie a citizen of India by virtue of the Citizenship Order. It is also plain that the Central Government reaffirmed its decision that the respondent had prima facie become a citizen of India in spite of the fact that the Central Government was informed about the making of declaration P3 by the respondent on April 27, 1962. On July 27, 1970 the Joint Secretary in the Ministry of Home Affairs addressed the following letter P3 to the respondent :

"I am directed to refer to your letter dated 27th July, 1970 requesting for grant of a certificate of citizenship under section 13 of the Citizenship Act, 1955, and to say that since the Goa Administration have in their letter No. HD9-436/ 64 dated 15th December, 1964, already informed you that you have prima facie become a citizen of India by virtue of, the Goa, Daman and Diu (Citizenship) Order, 1962, the necessity of a certificate under section 13 does not arise."

As already mentioned, the learned Judicial Commissioner has held that the above letter taken along with the preceding correspondence should be construed as a certificate issued by the Central Government under section 13 of the Citizenship Act. We find no cogent ground to take a different view. By the above letter the Government of India plainly reiterated and reaffirmed its view conveyed to the respondent on December 15, 1964 that he had prima facie become a citizen of India by virtue of the Citizenship Order. It was no doubt mentioned in the letter that the necessity of a certificate under section 13 does not arise, but this was plainly in view of the assumption made by the Government of India as expressed in that letter that the respondent was already accepted to be a citizen of India. The learned Judicial Commissioner, in the circumstances, cannot be held to be in error in construing letter R3 and the preceding correspondence as a certificate under section 13 of the Citizenship Act.

To put it differently, section 13 vests the Central Government with power to certify in case a doubt exists as to whether a particular person is a citizen of India that he is such a citizen. In the case of the respondent a doubt was raised by the Government of Goa, Daman and Diu on the point as to whether he was a citizen of India. The Government of, Goa, Daman and Diu in this context referred to the fact that the respondent while praying on January 15, 1964 for being declared Indian citizen had suppressed the fact about his having signed

438

declaration P3 on April 27, 1962 choosing to retain Portuguese nationality. The Central Government even after being apprised of that fact refused to reconsider its decision of 1964 and observed that the matter should be treated as closed. When the respondent thereafter asked for certificate under section 13 the Central Government said that no such certificate was necessary in view of the earlier official communication which had been sent to him that he had prima facie become a citizen of India.

These facts, in our opinion, clearly establish that the Central Government after being put in possession of all relevant facts reiterated its view that the respondent was an Indian citizen and should be considered as such. Letter dated July 26, 1970 and July 27, 1970, though they do not profess to be certificates issued under section 13 and though the later of these two letters recites that there was no necessity of a certificate, clearly incorporate the view of the Government of India that the respondent was an Indian citizen. The letters thus serve the purpose of a certificate and we agree with Mr. Sen, counsel for the respondent, that they operated as certificate and should be construed as such.

We may observe that the Government of India issued a passport in favour of the respondent in 1965 and thereafter in 1970. The respondent before his election to the Lok

Sabha in 1971 was also a member of the Lok Sabha from 1967 till 1971. When elected as a member of the Lok Sabha in 1967 as also when he obtained the Indian passport in 1965 and 1970 the respondent had to sign the declaration that he was an Indian citizen. He has already renounced his Portuguese citizenship. To hold at this stage that the respondent is not an Indian citizen would have the effect of rendering him stateless.

As a result of the above, we find that there is no merit in the appeal. It accordingly fails and is dismissed with costs.

P.B.R.

Appeal dismissed.

439

JUDIS