

1961

April 5.

## FIDA HUSSAIN

v.

## STATE OF UTTAR PRADESH

(B. P. SINHA, C. J., S. K. DAS, A. K. SARKAR,  
K. C. DAS GUPTA and  
N. RAJAGOPALA AYYANGAR, JJ.)

*Foreigner—Pakistani entering India in 1953—Whether a foreigner—Foreigners Act, 1946 (31 of 1946), s. 2(a).*

The appellant was born in India before the partition. He left for Pakistan and returned to India in 1953 on a Pakistani passport and Indian visa. He did not return to Pakistan before the expiry of the period for which he was permitted to stay in India under the visa. He was convicted for a breach of paragraph 7 of the Foreigners Order, 1948, which required every "foreigner" entering India to depart from India before the expiry of the period during which he was authorised to remain in India.

*Held*, that the appellant was not a foreigner on the date of his entry into India and his conviction was bad. On the relevant date the appellant was a natural born British subject within s. 1(1)(a) of the British Nationality and Status of Aliens Act, 1914, and consequently was not a foreigner as defined in s. 2(a) of the Foreigners Act, 1946, as it then stood.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 129 of 1960.

Appeal by special leave from the judgment and order dated March 9, 1960, of the Allahabad High Court in Criminal Revision No. 697 of 1959.

*Naunit Lal*, for the appellant.

*G. C. Mathur* and *C. P. Lal*, for the respondent.

1961. April 5. The Judgment of the Court was delivered by

SARKAR, J.—The appellant who had earlier left India, returned on a passport granted by the Government of Pakistan on May 16, 1953. He had a visa endorsed on his passport by the Indian authorities permitting him to stay in India for three months and this permission was later extended upto November 15, 1953. He did not, however, return to Pakistan within that date upon which he was convicted under s. 14 of

the Foreigners Act, 1946, by a Sub-Divisional Magistrate on March 14, 1959, and sentenced to rigorous imprisonment for one year. His appeal to a Sessions Judge was dismissed and the High Court at Allahabad, on being moved in revision, refused to interfere with the order of the Sessions Judge. This appeal is against the judgment of the High Court.

The appellant had been convicted for breach of paragraph 7 of the Foreigners Order of 1948, issued under s. 3 of the Foreigners Act. That paragraph requires that every foreigner entering India on the authority of a visa issued in pursuance of the Indian Passport Act, 1920, shall obtain from the appropriate authority a permit indicating the period during which he is authorised to remain in India and shall, unless that period is extended, depart from India before its expiry. As earlier stated, the visa on the appellant's passport showed that he had permission to stay in India till November 15, 1953 but he stayed on after that date. Hence the prosecution.

It is contended on behalf of the appellant that he could not be convicted of a breach of paragraph 7 of the Foreigners Order for that paragraph applies to a "foreigner" entering India on the authority of a visa issued in pursuance of the Indian Passport Act and overstaying the period for which he is permitted to stay in India. It is contended that the foreigner contemplated in this paragraph is a person who was a foreigner on the date of his entry into India. The appellant says that on that date he was not a foreigner and, therefore, the provisions of the paragraph do not apply to him. This contention of the appellant is plainly correct. The paragraph contemplates a foreigner entering India, and therefore, a person who at the date of the entry was a foreigner.

Now, the word "foreigner" in paragraph 7 has the same meaning as that word has in the Foreigners Act. The word "foreigner" is defined in that Act in s. 2(a). That definition has changed from time to time, but we are concerned with the definition as it stood in

1961

—  
*Fida Hussain*  
 v.  
*State of*  
*Uttar Pradesh*  
 —  
*Sarkar J.*

1961

*Fida Hussain*  
v.  
*State of*  
*Uttar Pradesh*  
—  
*Sarkar J.*

1953 when the appellant entered India, which was in these terms:

“foreigner” means a person who.....

(1) is not a natural-born British subject as defined in sub-sections (1) and (2) of Section 1 of the British Nationality and Status of Aliens Act, 1914, or

(2) has not been granted a certificate of naturalisation as a British subject under any law for the time being in force in British India, or

(3) is not a citizen of India.

The appellant's contention is that he was not a foreigner because he came within cl. (1) of the definition as he was a natural-born British subject within s. 1(1), (a) of the British Nationality and Status of Aliens Act, 1914. Now that provision is in these terms:

*S. 1. (1)* The following persons shall be deemed to be natural-born British subjects, namely,—

(a) any person born within His Majesty's Dominion and allegiance.

That the appellant was born at Allahabad at a time when it was within his Britannic Majesty's Dominion is not in dispute. That being so, we think that it must be held that at the date of his entry into India the appellant was a natural-born British subject and, therefore, not a foreigner. He could not have committed a breach of paragraph 7 of the Foreigners Order.

In the result we allow the appeal and set aside the conviction of the appellant and sentence passed on him.

Before leaving this case we think it right to make a few more observations. The definition of a foreigner in the Foreigners Act was amended with effect from January 19, 1957, by Act 11 of 1957. The definition since that date is as follows: ““foreigner” means a person who is not a citizen of India”. Under s. 3(2), (c) of the Foreigners Act, the Central Government has power to provide by order made by it that a foreigner shall not remain in India. We wish to make it clear that we have said nothing as to the effect of the amended definition of a “foreigner” on the status of the

appellant. No question as to the effect of the amended definition on the appellant's status fell for our decision in this case for we were only concerned with his status in 1953. We would also point out that no order appears to have been made concerning the appellant under s. 3(2)(c) and we are not to be understood as deciding any question as to whether such an order could or could not have been made against the appellant.

1961  
 —  
 Fida Hussain  
 v.  
 State of  
 Uttar Pradesh  
 —  
 Sarkar J.

*Appeal allowed.*

AKBAR KHAN ALAM KHAN AND ANOTHER

v.

THE UNION OF INDIA AND OTHERS

(B. P. SINHA, C. J., S. K. DAS, A. K. SARKAR,  
 K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

1961  
 —  
 April 5.

*Citizenship—Suit for declaration of rights as Indian Citizens—Jurisdiction of Civil Court—Citizenship Act, 1955 (57 of 1955), s. 9(2).*

The only question that a civil court is precluded from determining under s. 9(2) of the Citizenship Act, 1955, read with r. 30 of the Rules framed under the Act is the question as to whether, when or how any person has acquired the citizenship of another country. They are not prevented from determining other questions concerning the nationality of a person.

Where, therefore, a suit brought for a declaration that the appellants were Indian Citizens, where they themselves had raised the question of acquisition of foreign citizenship, was resisted on the ground that they had never been Indian Citizens, and the courts below dismissed the suit in its entirety,

*Held*, that the courts below were in error in holding that the suit was barred in its entirety by s. 9(2) of the Act.

They should have decided the question as to whether the appellants had ever been citizens of India and, if the finding was in their favour, should have stayed the suit till the Central Government had decided whether such citizenship was renounced and if the finding was against the appellants dismissed the suit.