

Fazal Dad v. State Of Madhya Pradesh

AIR 1964 MP 272

Case Summary and Analysis

UNDERSTANDING THE BACKGROUND TO THE FACTS

- Fazal Dad v. State of Madhya Pradesh is a case pertaining to **citizenship**.
- It occurred in **post – partition** India, when several questions of citizenship based on **settlement** were being raised.

FACTS LEADING TO THE JUDGEMENT

- Fazal Dad (a.k.a Sardar Khan Fateh Ali) claimed to be a **resident** of Fabra, District Vidisha, Madhya Pradesh for the 40 years preceding the date from which the facts leading to the case commenced.
- He owned considerable **immovable property** there.



IN JULY 1948...

- Dad went to Chak, Shekhu District, Pakistan to participate in a marriage and bring back his children from there.
- The visit was supposed to be **temporary**.
- For **reasons beyond his control** the petitioner had to stay in Pakistan till 1953.



BY OCTOBER, 1948...

- The Government of India had introduced a **permit system**.
- No one from Pakistan was allowed to come back to India without a permit.



THUS, IN OCTOBER 1953...

- Dad entered India on the strength of a Pakistan passport issued by the Government of Pakistan.
- He did so through a visa issued by the Indian High Commissioner, Lahore.



HOWEVER...

- Dad contends that he has **always been a citizen of India.**
- He could not, on account of his allegedly temporary visit to Pakistan in July 1948, which was delayed for reasons beyond his control, be deemed to have lost his rights of a citizen of this country.



WHAT ARE THE LEGAL PROVISIONS IMPORTANT TO THIS JUDGEMENT?

- The case makes reference to:
 - Section 2, **Foreigners Act, 1946** (amended in 1957 to change the definition of ‘foreigner’);
 - Section 11 and 12, **Citizenship Act, 1955**;
 - Article 7 , **The Constitution of India**;
 - Rule 3, **Citizenship Rules, 1956**.

WHAT DID THE MADHYA PRADESH HIGH COURT SAY?

- The Madhya Pradesh HC first enumerated the relevant laws.
- Pakistani citizens could not be treated as foreigners prior to the amendment of the **definition of "foreigner"** in by the Foreigners Laws (Amendment) Act, 1957.

- Under the Citizenship Act, 1955, there is a **distinction between Commonwealth and India citizens.**
- Every person who is a citizen of a Commonwealth country will have the status of a Commonwealth citizen in India. Pakistan is a Commonwealth country.

- However the **Central Government** can **confer** all or any of the **rights of a citizen** of India on a citizen of any Commonwealth country vide an **order** notified in the Official Gazette.

- Moreover, those who migrated to Pakistan after **March 1, 1947** and did not return to India till the **commencement of the Constitution of India** cannot be considered to be citizens of India either by virtue of
 - any of the provisions in the Constitution
 - or;
 - the Citizenship Act 1955.

- After the amendment of 'foreigners', the effect of the provisions of **Article 7** of the Indian Constitution is that all those who had migrated from India to Pakistan after 1st March, 1947 were not to be called citizens of India **unless** they had returned with a permit for:
 - **Resettlement;**
 - **Permanent Return.**

After moving to Pakistan one, who on a subsequent visit with a temporary permit, **represents himself** to be a Pakistani national, cannot claim that he went to Pakistan only for a temporary purpose.

- The Court makes a reference to the **Citizenship Act of Pakistan**. As per the Act, a person is not entitled to apply for or obtain a passport unless he is a citizen of Pakistan.
- Moreover, the prescribed form of the application requires that the applicant to make a **declaration to the effect that he is a citizen of Pakistan** which must be accepted by the Pakistan authorities before a passport is issued.

- When a Pakistani passport is obtained, in the **Pakistan Government's eyes the applicant is their own citizen.**
- The citizen would be **estopped** from claiming against the Pakistan Government that the statement made by him about his status was untrue.

- Therefore, Dad was held to be a **citizen of Pakistan.**
- The case was **dismissed with costs.**