

KULATHIL MAMMU

v.

THE STATE OF KERALA

March 2, 1966

[P.B. GAJENDRAGADKAR, C.J., K.N. WANCHOO,
M. HIDAYATULLAH, J.C. SHAH, S.M. SIKRI
AND V. RAMASWAMI, JJ.]

Constitution of India Art. 7—'Migrated' meaning of—Whether mere movement from one place to another constitutes migration.

A was born in Kozhikode of parents who were both Indian citizens. In 1948 at the age of 12 he went to Pakistan. He came to India for some time in 1954 on a Pakistani passport in which he was described as a Pakistani national. He again came for some time in 1956. After that there was no record in Kozhikode of his movements but in 1964 he was again found there without any valid travel documents. On action under the Foreigners Act being taken against him a writ petition was filed in the High Court and it was urged that he was an Indian citizen. The High Court held that he had 'migrated' to Pakistan within the meaning of Art. 7 of the Constitution in 1948, and therefore was a foreigner. With certificate the appellant came to this Court.

HELD: (per P.B. Gajendragadkar, C.J., K. N. Wanchoo, S. M. Sikri and V. Ramaswami, JJ.)

(i) The word "migrated" is capable of two meanings: In its narrower connotation it means going from one place to another with the intention of residing permanently in the latter place; in its wider connotation it simply means going from one place to another whether or not with the intention of permanent residence in the latter place. In Art. 7 the word is used in its wider sense, *Shanno Devi's* case in which the narrower meaning was attributed to the word was wrongly decided. [709 C; 714 A]

Smt. Shanno Devi v. Mangal Sain, A.I.R. 1961 S.C. 58, held wrongly decided.

(ii) The *non-obstante* clause with which Arts. 6 and 7 begin shows that the concept of domicile found in Art. 5 is not to be brought into these Articles. Moreover Arts. 6 and 7 speak of migration after March 1, 1947 when partition had not yet taken place. At that time the question of change of domicile did not raise, and even after partition people moved without forming any definite intention as to their permanent place of abode. [712 D; 713 B]

(iii) However, even when used in the wider sense the word "migrated" cannot take in movement which was involuntary or for a specific purpose and for a short and limited period. [713 D-E]

Per Hidayatullah J. (dissenting) :

The decision in *Shanno Devi's* case was correct. The word "migrate" in the context of Arts. 6 and 7 cannot mean mere going from one place to another. Just as domicile is a question of fact and intention, migration is also a question of fact and intention. The immediate requirement of intention in migration as used in the Constitution is that the person intended to change his abode from one part of India to another. If the part to which he went came to be incorporated in the territory of Pakis-

A tan he had to return the manner prescribed in the proviso to Art. 7 or he would not be deemed to be a citizen of India. [719 B-C; 718 F-H]

B *Per Shah J.*—The word “migrate” is used in more senses than one and the context must decide its meaning. In ascertaining the meaning of that word in Arts. 6 and 7 the court would have regard to the scope and object of the constitutional provisions examined in the light of the events which were witnessed both before and after the birth of the dominions of India and Pakistan. Another matter that must be kept in mind is that Arts. 6 and 7 deal with the status at the commencement of the Constitution. And if intention to take up permanent residence in one or the other dominion, coupled with movement could alone justify a claim for citizenship of the country into which the migrant has moved, a large number of persons who migrated from the territory of Pakistan to India would find themselves without citizenship of India. Therefore “migrated from the territory of India” within the meaning of Art. 7 means moving from one place to another but not necessarily with the intention of permanently residing in the country into which the person has moved. [720 F; 721 C; 723 A-B]

Case law considered.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 24 of 1965.

D Appeal from the judgment and order dated December 21, 1964, of the Kerala High Court in O.P. No. 3077 of 1964.

O.P. Malhotra, S.N. Prasad, J.B. Dadachanji, O.C. Mathur and Ravindra Narain, for the appellants.

Niren De, Additional Solicitor-General, A.G. Puddissery and M.R.K. Pillai, for the respondents.

E *Niren De, Additional Solicitor-General, R. Ganapathy Iyer and B.R.G.K. Achar*, for the intervener.

The Judgment of GAJENDRAGADKAR, C.J., WANCHOO, SIKRI AND RAMASWAMI, JJ. was delivered by WANCHOO J., HIDAYATULLAH AND SHAH, JJ. delivered separate opinions.

F **Wanchoo, J.**—The main question that arises in this appeal on a certificate granted by the High Court of Kerala is the interpretation of the word “migrated” in Art. 7 of the Constitution. Aboobacker on whose behalf the writ petition from which this appeal has arisen was filed in the High Court was born on March 5, 1936 in the district of Kozhikode of parents who were both Indian citizens. Aboobacker left India sometime in 1948 and went to Karachi in Pakistan when he was a boy of 12 years of age. He remained in Pakistan till 1954. On March 10, 1954, he obtained a Pakistani passport and came to district Kozhikode in India on visa granted to him in September 1954. On November 1, 1954, he again left for Pakistan. In 1956 he came to India again with the same passport but on a fresh visa obtained in April 1956. He remained in India till June 1956 when he returned again to Pakistan. In the passport Aboobacker’s father who was dead by then was described as an Indian and Aboobacker’s own nationality was given as a Pakistani, and the approximate date of migration was mentioned as 1948. There was no record in Kozhikode after June 1956 as

to the whereabouts of Aboobacker; but in October 1964 he was found living in the district of Kozhikode and did not have any valid travel documents. Consequently he was arrested and a case under the Indian Passport Rules 1950 was registered against him. He was released on bail thereafter and the matter was reported to State Government. On this report the State Government passed an order on November 5, 1964 under the Foreigners Act (No. 31 of 1946) requiring him not to remain in India. As Aboobacker was unwilling to comply with the order he was arrested and detained.

On November 16, 1964, a writ petition was filed on behalf of Aboobacker by the appellant in the High Court, and the contention raised therein was that Aboobacker was an Indian citizen and therefore the order passed against him under the Foreigner's Act was illegal. It was prayed that the order should be quashed and Aboobacker released.

The petition was opposed on behalf of the State and on the facts which we have set out above and which are not in dispute now, the contention of the State was that Aboobacker ceased to be a citizen of India when the Constitution came into force by virtue of Art. 7 thereof and in consequence the order directing him to leave India under the Foreigner's Act was legal and proper.

The main contention raised before the High Court on behalf of Aboobacker was that Art. 7 had no application in this case because migration contemplated in that Article must be with the intention to leave India permanently and settle finally in Pakistan and that as Aboobacker was a minor at the time he left India he could not be imputed with any such intention, and in any case he had no such intention because he had simply gone to Karachi in search of livelihood as he was poor. On the other hand, it was contended on behalf of the State that no such intention was necessary and that migration under Art. 7 of the Constitution simply meant the physical act of going from India to Pakistan and if any person did so whether he was a minor or a major he would be covered by Art. 7 of the Constitution. Reliance was placed in the High Court on behalf of Aboobacker on a decision of this Court in *Smt. Shanno Devi v. Mangal Sain*.⁽¹⁾ The High Court seems to have held that even if any such intention was necessary there was sufficient indication to prove that Aboobacker had such intention. The High Court did not accept the extreme argument on behalf of Aboobacker that a minor could never have any such intention. It therefore held that Aboobacker had migrated to Pakistan within the meaning of Art. 7 and was thus a foreigner within the meaning of that word in the Foreigner's Act and the State Government was justified in ordering him not to remain in India, and as he was unwilling to comply with that order his arrest for the purpose of deporting him to Pakistan was justified. In consequence, the

(1) [1961] 1 S.C.R. 576 : A.T.R. 1961 S.C. 58.

A petition was dismissed. Thereafter on an application for a certificate, the High Court granted the certificate to appeal to this Court on the ground that a question as to the interpretation of Art. 7 of the Constitution was involved in the case.

The main question that falls for consideration therefore is the meaning of the word "migrated" used in Art. 7 of the Constitution. Article 7 runs thus:

"Notwithstanding anything in articles 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 be deemed to be a citizen of India:

Provided....."

C The word "migrated" is capable both of a narrower meaning as well as of a wider meaning. In its narrower connotation it means going from one place to another with the intention of residing permanently in the latter place; in its wider connotation it simply means going from one place to another whether or not with any intention of permanent residence in the latter place. In Webster's dictionary (Second Edition, 1937), the word "migrate" means "to go from one place to another; especially to move from one country, region or place of abode or sojourn to another, with a view to residence; to move." *Corpus Juris Secundum* published in 1948 gives the same meaning except that it adds one more meaning namely, "to change one's place of residence". It will be seen that if the narrower meaning is given an intention to settle in the place to which a person moves on migration is necessary. On the other hand if the wider meaning is given all that is necessary is that there should be movement from one place to another whether or not there is any intention of settlement in the place to which one moves. The question that is posed for our consideration is which of the two meanings was intended by the Constitution-makers when they used the word "migrated" in Art. 7. The matter has been referred to a larger Bench because when dealing with the same word "migrated" in Art. 6, this Court took the view in *Smt. Shanno Devi's case*(1) that the word "migrated" had been used in that Article in the narrower sense. The contention on behalf of Aboobacker is that the same narrower meaning should be given to this word in Art. 7.

In order to decide the question whether the narrower or the wider meaning of the word "migrated" was intended by the Constitution-makers, we have to look at the scheme of Part II of the Constitution which deals with citizenship. The first Article in that Part is Art. 5 and it lays down the normal rule of citizenship. Under that Article every person who has his domicile in the territory of India at the commencement of the Constitution and satisfies one of

(1) [1961] 1 S.C.R. 576 : A.I.R. 1961 S.C. 58.

the three conditions laid down therein is a citizen of India. But the Constitution also deals with the abnormal situation that prevailed in the country about the time of its partition between India and Pakistan and Articles 6 and 7 deal with that abnormal situation. It is well-known that there was large movement of population from what is now the territory of Pakistan to the territory of India and *vice versa* from about March 1947 and this continued late into 1948. Articles 6 deals with this movement of population from the territory now included in Pakistan to the territory of India while Article 7 deals with the movement from the territory of India to what is now the territory of Pakistan. Both these Articles begin with a *non obstante* clause. Article 6 begins with the words "notwithstanding anything in Article 5" and Article 7 begins with the words "notwithstanding anything in articles 5 and 6". The presence of the *non obstante* clause in both these Articles clearly indicates that they were meant to deal with the abnormal situation to which we have already referred and prescribe conditions as to who shall be deemed to be citizens of India on the date of the commencement of the Constitution (Art. 6) and who shall not be so deemed (Art. 7). It is also remarkable that both these Articles are silent on the question of domicile and the presence of the *non obstante* clause in the beginning of these Articles clearly shows in our opinion that the concept of domicile was not to be brought into them when deciding who shall be deemed citizens of India (Art. 6) or who shall not be deemed to be citizens of India (Art. 7). These two Articles make special provision for dealing with the abnormal situation created by large movement of population from one side to the other and *vice versa* and lay down special criteria of their own, in one case for deciding who shall be deemed to be citizens of India (Art. 6) and in the other case who shall not be deemed to be such citizens (Art. 7). It seems to us therefore that the Constitution-makers did not intend that the concept of domicile should be brought into Articles 6 and 7 notwithstanding that such concept was present in Art. 5, which provides for the normal case of citizenship of India. In this situation it seems to us clear that when Art. 6 as well as Art. 7 use the word "migrated", the intention must have been to give the wider meaning to that word, namely, going from one territory to the other.

We may in this connection refer to the following observations of Mahajan, C.J. in *Central Bank of India v. Ram Narain*(¹) to show that the idea of domicile or permanent change of residence could not be a part of the meaning of the word "migrated" as used in Arts. 6 and 7:—

"It has to be remembered that in October or November 1947 men's minds were in a state of flux. The partition of India and the events that followed in its wake in both

(1) [1955] 1 S.C.R. 697 : A.I.R. 1955 S.C. 36.

A Pakistan and India were unprecedented and it is difficult to cite any historical precedent for the situation that arose. Minds of people affected by this partition and who were living in those parts, were completely unhinged and unbalanced and there was hardly any occasion to form intentions requisite for acquiring domicile in one place or another. People vacillated and altered their programmes from day to day as events happened. They went backward and forward; families were sent from one place to another for the sake of safety.

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C “Most of those displaced from West Pakistan had no permanent homes in India where they could go and take up abode. They overnight became refugees, living in camps in Pakistan or in India. No one, as a matter of fact, at the moment thought that when he was leaving Pakistan for India or *vice versa* that he was doing so for ever or that he was for ever abandoning the place of his ancestors.”

D If this was the situation (and we have no doubt that it was so even from March 1947) at the time when the abnormal movement of population from one side to the other took place, there can be no doubt that when the Constitution-makers used the word “migrated” in Arts. 6 and 7 they could never have intended to give what we have called the narrower meaning to the word “migrated”, for there could be no deliberate intention to change one’s residence permanently when this large movement of population from one side to the other and *vice versa* took place. That is also the reason why both these Articles begin with a *non obstante* clause and thus in our opinion exclude the concept of domicile for the purposes of these Articles. If that was so and if the concept of domicile is excluded from these two Articles and we have no doubt that it is so excluded by the use of the *non obstante* clause in both these
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F Articles, the word “migrated” used therein must be given the wider meaning. If we give the narrower meaning to it we shall be introducing the concept of domicile in these two Articles which was obviously not intended by the Constitution-makers and in any case was definitely negated by the use of the *non obstante* clause at the beginning of both these Articles.

G It is said that curious consequences would follow if the intention of residing permanently in one territory or another when the migration took place is not inherent in these two Articles. These curious consequences are said to be illustrated by the case of two persons, one of whom was born in what is now India and has all along lived there and another person who though born in what is now India went to live in areas now in Pakistan and then moved back to areas in what is now India. The first named person would have to satisfy the requirement of domicile at the commencement of the Constitution under Art. 5 before he can be a citizen of India while the other
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would not have to satisfy this condition if he falls within Art. 6. That is undoubtedly so. But we do not see anything strange in it. In the hypothetical example the first person would have no difficulty in establishing his domicile in India for the very assumption that he was born in India and lived in India all along would prove his domicile. In the case of the other man the necessity of domicile is certainly obviated on our interpretation of Art. 6 but that is because Art. 6 was dealing with an abnormal situation and therefore did away with the concept of domicile by the use of the *non obstante* clause therein. That is one reason why we think that the Constitution-makers intended to give what we have called the wider meaning to the word "migrated" in Articles 6 and 7.

Then we may refer to Art. 8. That Article also begins with the *non obstante* clause "notwithstanding anything in article 5". That Article confers Indian citizenship on a person who on the face of it had no domicile in India, if certain conditions mentioned therein are fulfilled. It is clear therefore that when Art. 8 as well as Articles 6 and 7 use the *non obstante* clause, the intention clearly is to exclude the concept of domicile from these three Articles. Article 6 would deem a person to be a citizen of India if the conditions thereof were satisfied while Article 7 would make a person not a citizen of India if conditions thereof were satisfied and finally Art. 8 would deem a person to be a citizen of India if the conditions thereof were satisfied—all of course at the commencement of the Constitution. We may add that Art. 7 begins with a *non obstante* clause which excludes both Articles 5 and 6. Therefore, a person to whom Art. 7 applies cannot claim citizenship either under Art. 5 or under Art. 6. He can either fall under the main part of Art. 7 (in which case he will not be deemed to be a citizen of India) or take advantage of the proviso to Art. 7, if he can, to show that he has become a citizen of India thereunder.

There is another consideration which leads us to the same conclusion. Article 6 which provides for deeming a person to be a citizen of India lays down in cl. (b) (i) that such person should have migrated to India before the 19th day of July 1948 and should be ordinarily resident in the territory of India since the date of his migration. Now this provision will apply to all cases of migration before the 19th day of July 1948 and even before the 15th day of August 1947 when India and Pakistan came into existence. Take a case of a person who migrated from what is now the territory of Pakistan to what is now the territory of India in 1946. At that time there could be no question of his changing his domicile for both territories were parts of the same country. Therefore when Art. 6 speaks of migration it can only mean going from one part of the country to another and there would be no question of any intention to change the domicile by such migration. Similarly Art. 7 speaks of migration from the territory

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A of India to the territory of Pakistan after March 1, 1947. Take the case where a person migrated after March 1, 1947 but before August 15, 1947, when India and Pakistan came into existence. At that time there could be no question of any intention of changing the domicile for the two countries were still one and it was only in June 1947 that the final decision to divide India as it was before
B August 15, 1947 was taken. Even so, the exact boundary between the two countries which were to come into existence was not settled till the Radcliffe award just about August 15, 1947. In such a situation it would in our opinion be odd to introduce the concept of domicile either in Art. 6 or Art. 7. All these considerations therefore lead us to the conclusion that when the Constitution-makers
C used the word "migrated" in Art. 6 and Art. 7 they used it in the wider sense to which we have referred earlier and not in the narrower sense and this meaning is in our opinion in accord with the circumstances which prevailed at the time which resulted in large movement of population from one side to the other.

Even so we are of opinion that there is one qualification which
D must be attached to the word "migrated" as used in these two Articles, even though that word has the wider meaning of going from one place to another in the context of these Articles. That qualification is that the movement should have been voluntary and should not have been for a specific purpose and for a short and limited period. A case where a person went on what may be called a visit from the territory of India to the territory of Pakistan
E for a short and limited period with a specific purpose would not be covered by the word "migrated" as used in art. 7. Similarly a case where a person was forced to go from the territory of India to the territory of Pakistan as, for example, where he might have been kidnapped or abducted would not be covered by the word "migrated" as used in Art. 7. Barring such cases the word "migrated" as
F used in Articles 6 and 7 has the wider meaning, namely, movement from one territory to another territory whether or not with the intention of permanent residence in the latter place. We may in this connection refer to *State of Bihar v. Kumar Amar Singh*⁽¹⁾, In that case a lady went to Karachi in July 1948 leaving her husband in India. Her case was that she had gone there for medical treatment, but this was found to be false. It was held that she had
G migrated from India to Pakistan after March 1, 1947 and even if Art. 5 could be said to be applicable on the assumption that her domicile was that of her husband, the case was covered by Art. 7 which applied notwithstanding anything in Art. 5. Thus this case shows that if migration was voluntary and not with a specific purpose and for a short and limited period, Art. 7 would apply irrespective of
H the fact whether the migration was with the intention of residing permanently in the place to which the person migrated.

(1) [1955] 1 S.C.R. 1259; A.I.R. 1955 S.C. 282.

This brings us to *Smt. Shanno Devi's case*⁽¹⁾. We are of opinion that the narrower meaning given in that case to the word "migrated" as used in Art. 6 is with respect not correct, and that the word "migrated" used in Arts. 6 and 7 has the wider meaning namely, coming or going from one place to another, whether or not with the intention of residence in the latter place, subject to the qualification which we have already indicated.

We may incidentally refer to Art. 9 also though it does not directly arise insofar as the question before us is concerned. That Article provides that no person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8 if he has voluntarily acquired the citizenship of any foreign State. That Article came up for consideration in *State of Madhya Pradesh v. Peer Mohd. & Another*⁽²⁾ and it was held that it did not apply to a case of acquisition of foreign citizenship after the Constitution came into force but only applied to such cases where foreign citizenship was acquired before the Constitution commenced. By oversight however in *Abdul Sattar Haji Ibrahim Patel v. State of Gujrat*⁽³⁾ it has been stated that cases in which migration had taken place after January 26, 1950 fall to be considered under Art. 9 of the Constitution. Article 9 does not use the word "migration" and deals only with voluntary acquisition of citizenship of a foreign State before the Constitution came into force as already decided in *Peer Mohd.'s case*⁽²⁾. We have thought it fit to refer to Art. 9 to correct the slip which has occurred in *Abdul Sattar's case*⁽³⁾. Cases of voluntary acquisition of foreign citizenship after the commencement of the Constitution have to be dealt with by the Government of India under the Citizenship Act, 1955.

Coming now to the facts of the present case it is obvious that Aboobacker went voluntarily to the territory of Pakistan some time after March 1, 1947. It is equally obvious that he did not go for any specific purpose and for a short and limited period. His case therefore clearly falls within the meaning which we have given to the word "migrated" in Art. 7 and therefore by virtue of that Article he will be deemed not to be a citizen of India on the date of the commencement of the Constitution. Thereafter he has not acquired the citizenship of India and he should therefore be held to be a foreigner; and if that is so, it is not disputed that the order passed by the State Government is legal and the view taken by the High Court thereof is correct.

In the view we have taken of the meaning of the word "migrated" in Art. 7, it is unnecessary to consider the other point raised on behalf of Aboobacker, namely, that a minor can never have the

(1) [1961] 1 S.C.R. 576; A.I.R. 1961 S.C. 58.

(2) [1963] Supp. 1 S.C.R. 429.

(3) A.I.R. 1965 S.C. 810.

A intention implicit in the narrower meaning of the word "migrated". The appeal therefore fails and is hereby dismissed.

B **Hidayatullah, J.** I agree that Aboobacker, on whose behalf this appeal has been filed cannot be said to have acquired the citizenship of India under the Constitution, but as I construe the word 'migrate' in Arts. 6 and 7 of the Constitution differently I wish to record my reasons separately. The facts have been stated already and I need not repeat them at length. Aboobacker left India in 1948 when he was 12 years old and went to Karachi. He came to India in 1954 on a Pakistani passport obtained on March 10, 1954 and returned to Pakistan in November 1954. He came once again on the same passport in June 1956 and went back to Pakistan. In C October 1964 he was found in the district of Kozhikode without proper travel papers and the present proceedings started against him. He does not claim to have returned to India under a permit for resettlement of permanent return issued by or under the authority of any law, which *prima facie*, he ought to have done under Arts. 6 and 7 if he wished to assert his Indian citizenship. As he admitted D 'migrated' after March 1, 1947, Art. 7 would apply to him but his claim is that he did not 'migrate' because he had no intention at the time, being a minor of acquiring a new domicile. He relies on a decision of this Court reported in *Smt. Shanno Devi v. Mangal Sain* (1) (to which I was a party) in support of his contention that the word 'migrate' means going to another country with a view of acquiring a new domicile there. That ruling is questioned in this appeal. It was decided in *Shanno Devi's case*(1) that the E word 'migrate' means going from one place to another with the intention of permanently residing in the latter place.

F As doubt has been expressed I wish to give my reasons for adhering to the view then expressed. The word 'migrate' has many shades of meaning. At one end of the spectrum it means to go from one place to another and at the other to leave one's country to settle in another. The word also connotes movement from one place of abode to another place of abode.

G My learned brother Wanchoo has held that the word 'migrate' means no more than to go from one place to another and that the element of an intention to acquire a domicile is not necessary. He has, however, given instances of some cases in which going from one place to another would not be sufficient because either the going was involuntary or there was no intention to stay in the new place but to return. These instances, which I also adopt, show that migration is not bare physical movement from India to the territory now included in Pakistan but is such movement accompanied by H an intention of some sort. What that intention should be is the matter in dispute.

Articles 5* to 10 deal with who shall be regarded as a citizen of India and who shall not. By the fifth article* every citizen, who at the commencement of the Constitution had 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 had been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, is a citizen of India. If we were to apply this test we would have to enquire whether Aboobacker, who admittedly was born in India, had his domicile in the territory on January 26, 1950. But this article does not apply to him because he admittedly left India for Karachi which is now in Pakistan, after the 1st day of March, 1947. His case therefore, falls within Art. 7. It is, however, claimed that as he was a minor in 1948 he could not have any intention to change his domicile and as he went to Karachi in search of livelihood, his domicile continued to be Indian. As Aboobacker was aged 12 at the time he went to Karachi, can we say that his going to a place now in the territory of Pakistan amounts in the circumstances to what the word 'migrate' connotes and attracts the provisions applicable to persons migrating after March 1, 1947 ?

Before I attempt to answer this question I shall say a few words about Arts. 6 and 7 because that will show how I view the word 'migrate' used in them. Article 6† begins with the words "Notwithstanding anything in article 5" and lays down that 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 the Constitution if 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 (a) in case such person had so migrated before the nineteenth day of July, 1948 he had been ordinarily resident in the territory

*5. Citizenship at the commencement of the Constitution.

At the commencement of the 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 immediately preceding such commencement

shall be a citizen of India.

†6. 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

A of India since the date of his migration, or (b) in case such person had so migrated on or after the nineteenth day of July, 1948, he had been registered as citizen of India. The *non obstante* clause has the effect of segregating article 6 from Art. 5.

B Viewing Aboobacker's case in the light of Art. 6 I find that he has not applied for registration nor has he proved that he returned to India before the nineteenth day of July, 1948. In fact he came back much after that date. Since Art. 6 deals with rights of citizenship of persons who migrated to India from Pakistan both the conditions in Art. 6 are not satisfied by Aboobacker.

C I shall now examine his claim under the proviso to Art. 7. Article 7* also begins with the words "Notwithstanding anything in articles 5 and 6", and deals with a person who has, after the 1st day of March 1947, migrated from the territory of India to the territory now included in Pakistan. Aboobacker migrated from the territory of India to the territory now included in Pakistan after the 1st day of March, 1947 and the article, therefore, applies to him. He can only claim the benefit of the proviso provided he returned to India under a permit for resettlement or permanent return issued to him, as provided. A person who returned to India as provided in the proviso was deemed to be treated as if he returned to India after the 19th day of July, 1948 and had to register himself. As Aboobacker went to Karachi after the 1st day of March, 1947 he could only return to India in the manner provided in the proviso, that is to say, under a permit for resettlement and he had to get himself registered on his return. Again, Aboobacker must fail on this claim as he did not get himself registered after his return to India.

(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 thereof 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 for at least six months immediately preceding the date of his application."

*7 Rights of citizenship of certain migrants to Pakistan.

Notwithstanding anything in articles 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 be deemed to be a 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 the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to their territory of India after the nineteenth day of July, 1948".

It will appear from this that three dates are important. The first is the 26th of January, 1950 on which day a person who had his domicile in the territory of India and satisfied one only of the three conditions in Art. 5 was deemed to be a citizen of India without anything more. The application of the other two articles depends on two dates. The first date is the 19th day of July, 1948 when a permit system was introduced. Persons who had not migrated to the territory of Pakistan but were in what is now Pakistan could return and claim citizenship under Art. 6. If they did so before the 19th day of July, 1948 and ordinarily resided in the territory of India from that time till January 26, 1950 they were to be citizens of India without anything more. If they migrated to India after the 19th day of July, 1948 they had to apply and get registered as citizens of India after residing for six months continuously in the territory of India.

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The other date is the 1st of March, 1947 which is crucial for persons who migrated after that date into the territory now in Pakistan. Such persons are not deemed to be citizens of India irrespective of whether they had, before their migration, domicile in the territory of India and whether they satisfied any one of the three conditions in Art. 5. Since Aboobacker does not satisfy the conditions of Art. 5, 6 or the proviso to Art. 7 he cannot claim to be a citizen of India. He, however, contends that the word 'migrate' in Arts. 6 and 7 means migration with the intention of acquiring a domicile in Pakistan. I shall now examine this contention.

The word 'migrate' in this context cannot obviously mean mere going from one place to another. A lawyer in Amritsar who conducted a case in Lahore on the 2nd of March, 1947 could not be said to have migrated from India to the territory now in Pakistan. His intention was not to change his place of abode. In the same way when persons fled the dangerous area because death and rapine were at their heels, they could not be said to have migrated to the territory now in Pakistan unless they were changing their abode. The decisive consideration is whether in so migrating a person changed his abode, that is to say, he left the territory of India to go and acquire an abode in the territory which is now in Pakistan. Just as domicile is a question of fact and intention, migration is also a question of fact and intention. The immediate requirement of intention in migration as used in the Constitution is that the person intended to change his abode from one part of India to another. If the part to which he went came to be incorporated in the territory of Pakistan he had to return in the manner prescribed in the proviso to Art. 7 or he would not be deemed to be a citizen of India.

Aboobacker left India in circumstances to which Art. 7 must clearly apply. That he was a minor makes no difference. The

- A** Constitution does not make a distinction between an adult and a minor. The intention of changing his abode from India to the territory now in Pakistan (whether he had it at the time or not) must be attributed to him because he returned to India several times and went back again under a Pakistani passport which clearly showed that he was intending to change his abode from India to Pakistan.
- B** His subsequent action shows the intention and an election to change the abode which the word 'migrate' in Art. 7 of the Constitution obviously indicate. This was the view taken by Das Gupta J. in *Shanno Devi's* case and I think that the decision was correct.

I would dismiss the appeal for the reasons I have set down above.

- C** **Shah, J.** The principal question raised in this appeal relates to the true meaning of the expression "migrated from the territory of India" in Art. 7 of the Constitution, conflict of opinion in this Court.

- D** Part II of the Constitution deals with citizenship. By Art. 11 Parliament is given the power to make provision with respect to the acquisition and termination of citizenship, and by Art. 10 every person who is or is deemed to be a citizen of India under the provisions of Arts. 5 to 9 shall, subject to the provisions of any law that may be made by Parliament, continue to be a 'citizen of India. Articles 5, 6, 7 and 9 were intended to deal with citizenship at the commencement of the Constitution. Article 8 deals with acquisition of citizenship by registration of a person ordinarily residing in any country outside India, if he is either *before or after* the commencement of the Constitution been registered as a citizen.

- E** By Art. 5 of the Constitution every person who had his domicile in the territory of India [as defined in Art. 1(3)] and who was either born in territory of India, or either of whose parents was born in the territory of India, or who had been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement was to be a citizen of India. This is the basic rule conferring citizenship at the commencement of the Constitution upon every person who had his domicile in the territory of India and who satisfied one or more of the three conditions in Art. 5. But Art. 5 was not exhaustive of the conditions in which citizenship of India could be claimed at the commencement of the Constitution : persons who did not satisfy the requirements of Art. 5 could still be citizens. By Act. 6 a person who has migrated to the territory of India from the territory now included in Pakistan would be deemed to be a citizen of India at the commencement of the Constitution if he satisfied two conditions that (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; and that (b) he had either migrated before

July 19, 1948, and had ordinarily been resident in the territory of India since the date of his migration or where he had migrated after July 19, 1948, he had been registered as a citizen of India by an officer appointed in that behalf. A person who could not claim to be a citizen of India under Art. 5 could still be deemed to be a citizen of India if the conditions mentioned in cl. (a) and either of the conditions in cl. (b) of Art. 6 were satisfied. Article 7 engrafts an exception both upon Arts. 5 and 6. A person who would have been a citizen of India because he satisfied the conditions of Art. 5 or who would be deemed to be a citizen of India because he satisfied the requirements of Art. 6, would still not be deemed to be a citizen of India, if he had after the first day of March, 1947, migrated from the territory of India to the territory included in Pakistan, unless he had after having migrated to Pakistan returned to the territory of India under a permit for resettlement or permanent return.

Article 6 therefore confers citizenship upon a person in the conditions mentioned therein who would otherwise not be entitled to that status, under Art. 5, where as Art. 7 disables a person from claiming the status, notwithstanding that he otherwise complies with the requirements of Art. 5 or of Art. 6, if he has after the specified date migrated from the territory of India to the territory of Pakistan. Article 6 deals with migration *into* India which confers citizenship and Art. 7 deals with migration *from* India which disables a person from claiming citizenship of India at the commencement of the Constitution. The expression "migrated" cannot have different meanings in the two Articles.

The word "migrate" is used in more senses than one : it in some contexts means movement from one region or country to another implying intention to settle in a new land permanently; it in other contexts means movement from one place to another without an intention to settle permanently in that of the other place. In ascertaining the meaning of the expression "migrate" in Arts. 6 and 7 the Court would have regard to the scope and object of the Constitutional provisions examined in the light of the events which were witnessed both before and after the birth of the dominions of India and Pakistan, resulting in a violent upheaval in which large-scale exodus of population took place from across the boundaries which divided the dominions. As pointed out by Mahajan, J., in *Central Bank of India v. Ram Narain* (1) :

"Minds of people affected by this partition and who were living in those parts were completely unhinged and unbalanced and there was hardly any occasion to form intentions requisite for acquiring domicile in one place or another. People vacillated and altered their programmes from day to

(1) [1955] 1 S.C.R. 697, 705.

A day as events happened. They went backward and forward; families were sent from one place to another for the sake of safety. Most of those displaced from West Pakistan had no permanent homes in India where they could go and take up abode. They overnight became refugees, living in camps in Pakistan or in India. No one, as a matter of fact, at the moment thought that when he was leaving Pakistan for India or *vice versa* that he was doing so for ever or that he was for ever abandoning the place of his ancestors. Later policies of the Pakistan Government that prevented people from going back to their homes cannot be taken into consideration in determining the intention of the people who migrated at the relevant moment.”

C Another matter which must also be kept in mind is that Arts. 6 and 7 deal with the status at the commencement of the Constitution. Therefore migration into the territory of India which conferred the status of citizenship under Art. 6, and migration from India which disabled a person from claiming citizenship under Art. 7 must be complete before the date of the commencement of the Constitution. D If therefore intention to settle permanently in the country in which a person has moved is a necessary component of migration, such intention must have been formed before the commencement of the Constitution, and many persons who were compelled to move from their hearths and homes on account of a sense of insecurity resulting from riots and civil commotion still hoping that they would E be going back to the abodes of their ancestors when the situation returned to normal, may not be deemed to have migrated at all. This, in my judgment, would introduce an element of uncertainty in the determination of citizenship and involve great hardship to the migrants.

F Two cases in which this Court was called upon to consider the meaning of “migrate” may be referred to. In *Smt. Shanno Devi v. Mangal Sain* (1) it was held by this Court that the expression “migrated to the territory of India” in Art. 6 of the Constitution means “come to the territory of India with the intention of residing there permanently”. The dispute in that case arose in an election case. Mangal Sain who was born in 1927 of Indian parents in the territory which since August 15, 1947 had become part of Pakistan, G moved in 1944 to Jullunder, and thereafter lived in the territory which is part of India, except for a short period when he went to Burma. It was contended in an election dispute that Mangal Sain was not a citizen of India and therefore could not stand for election. That contention was rejected by this Court on the finding that the respondent Mangal Sain who had earlier moved from a place in H Pakistan to Jullunder had definitely made up his mind to make India his permanent home and therefore he satisfied the first

(1) [1961] 1 S.C.R. 576.

requirement of Art. 6 after migration to the territory of India from the territory now included in Pakistan and it being established that Mangal Sain was born in India as defined in the Government of India Act, 1935, he satisfied the requirement of cl. (a) of Art. 6. The Court in that case regarded movement from one territory to another, with intention to reside permanently in the new territory as a necessary ingredient. But in an earlier judgment of this Court in *The State of Bihar v. Kumar Amar Singh & Others*(1), the question whether one Kumar Rani Sayceda Khatoon was, because of migration from the territory of India after March 1, 1947, not to be deemed a citizen of India. Kumar Rani who was born in the territory of India and had married Captain Maharaj Kumar Gopal Saran Narayan Singh of Gaya in 1920 left for Karachi in July 1948 and returned to India in December 1948 on a temporary permit. She again left for Pakistan in April 1949 on the expiry of the permit. Her claim that she went to Pakistan temporarily for medical treatment was not accepted. After her property in India was taken over by the Custodian of Evacuee Property, she obtained a permit for permanent return and came to India in 1950. This permit was later cancelled, and she was directed to leave India. In a petition filed before the High Court of Patna it was declared that Kumar Rani was a citizen of India and the order directing her to leave India was set aside. This Court reversed the order of the High Court holding that since Kumar Rani had migrated from the territory of India to the territory of Pakistan, she had disqualified herself from claiming citizenship of India. The facts proved in *Kumar Amar Singh's case*(1) disclose that there was no evidence tending to show that Kumar Rani had entertained at any time before the commencement of the Constitution an intention permanently to reside in Pakistan. Her husband was in India, her property was in India and she had gone to Pakistan for about eight months in the year 1948 and thereafter in April 1949. The Court in that case apparently did not accept the view that to attract Art. 7, migration from the territory of India must be with an intention permanently to reside in the territory now included in Pakistan.

As already observed migration which has a bearing on the acquisition of citizenship must be complete before the commencement of the Constitution. And if intention to take up permanent residence in one or the other Dominion, coupled with movement could alone justify, a claim for citizenship into which the migrant has moved, a large number of persons who migrated from the territory of Pakistan to India would find themselves without citizenship of India in the territory whereof on account of the compulsion of political events they had moved and had since then lived.

(1) [1955] 1 S.C.R. 1259.

- A** In my view "migrated from the territory of India" within the meaning of Art. 7 means moving from one place to another but not necessarily with the intention of permanently residing in the country in which the person has moved. I agree, however, that the movement should be voluntary and not purely temporary, such as movement for purposes of a business transaction or a professional or a social visit. I agree that the appeal shall stand dismissed.
- B**

Appeal dismissed.