

1993 Citizenship trial - Court Judgement

4. The Government may, upon an application made to it in this behalf in the manner prescribed, grant citizenship to any/person.

4A. The Government may upon an application, made to it in this behalf in the manner prescribed, grant right of permanent residence to any person on such conditions as may be prescribed.

5. The Government may make rules for carrying out the purpose of this Order."

13. It may be noted that when PO 149 of 1972 was made on 15.12.72 there was only 5 articles namely Articles 1, 2, 3, 4 and 5, which are effective from the 26th March, 1971. Articles 1A and 2B were inserted in the said Order firstly by Ordinance No. X of 1973 and thereafter by Act V of 1973, and that Article 2B was later on substituted by Ordinance No. VII of 1978. The new Articles 1A and 4A were inserted by Act LVIII of 1990. It may be noted that by section 1(2) of Act No. V of 1973, the Act shall be deemed to have taken effect from the 26th day of March, 1971; in other words, Articles 2A and 2B are effective retrospectively from the 26th March, 1971. The impugned notification dated 18.4.73 (Annexure-B) is to the following effect—

"Whereas it appears that the persons specified below have been staying abroad since before the liberation of Bangladesh and by their conduct cannot be deemed to be citizen of Bangladesh:

And whereas the said persons have continued to be citizens of Pakistan:

Now, therefore, the Government declares under Article 3 of the Bangladesh Citizenship (Temporary Provisions) Order 1972 (PO 149 of 1972), that the persons specified below do not qualify themselves to be citizens of Bangladesh:—

1.
2.
3. Prof. Golam Azam, S/o. Golam Kabir of PS Nabinagar, Dist. Comilla and of Road, Magbazar, Dhaka.

39.

by Order of the Government
Sd/- S. Ahmed,
Secretary."

14. Before entering into any discussion of the contention raised by the learned Advocate for the petitioner as well by the learned Attorney- General it is to be mentioned that we are concerned with *vires* of Article 3 of PO 149 of 1972 and the legality or otherwise of the impugned notification Annexure-B. In the affidavit-in-opposition filed on behalf of the respondents some books, periodicals and news items were mentioned and during the hearing the learned Attorney- General has produced before us a number of the books, periodicals and news items as reproduced either in some books or periodicals and some daily newspapers which quoted certain events and news as was published in the various dailies in 1971. The learned Attorney-General also produced a copy of Gazette Notification dated 15th February, 1972 wherein a proclamation was issued under the provision of the Bangladesh Collaborator (Special Tribunal) Order 1972 (PO 8 of 1972). Except the Gazette Notification dated 15th February, 1972 the other publications are of the dates subsequent to the issuance of the impugned Notification and some of the publications are of the year 1991 and 1992 though the news items and events relate to the period during the war of liberation. Further, the petitioner also challenged the authenticity of some of the events mentioned in the subsequent publications. Except some news items and one photograph showing that the petitioner met General Tikka Khan or General Yahya Khan, there is nothing to directly implicate the petitioner in any of the atrocities alleged to have been perpetrated by the Pakistani Army or their associates—the Rajakars, Al-Badr or the Al-Shams. Except that the petitioner was hobnobbing with the Military Junta during the war of liberation, we do not find anything that the petitioner was in any way directly involved in perpetuating the alleged atrocities during the war of independence. In my view, none of these reports is of any help for solving the legal question raised before us in this matter and, as such, I will refrain from mentioning any such reports or events in course of my discussion of the points raised in this matter.