
(1997) 12 GAU CK 0028
In the Gauhati High Court
Case No : Civil Rule No. 3183 of 1993

Abdul Ali @ Abdulla and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Illegal Migrants (Determination by Tribunals) Act, 1983 — Section 15(9), 8(1)

Citation : (1998) 4 GLT 148

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : A.F.G. Osmani, H.R.A. Choudhury, M.H. Raj Borbhuyan and A. Begum, for the Appellant; J. Ahmed, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas. J.

1. This writ petition under Article 226/227 of the Constitution has been directed against the order dated 17.8.91 passed by Illegal Migrants (Determination) Appellate Tribunal, Assam, Silchar dismissing the appeal case No. 92/1991 preferred by the Petitioners on the ground that it is barred by the law of limitation.

2. The case of the Petitioners, as is evident from Para-2 of die writ petition, is that the Petitioner No. 1 along with die Petitioner No. 2 came to India from East Pakistan (now Bangladesh in 1951 and initially settled at Biswanath Chariali in the district of Darrang. After about a year in 1952, they shifted to Silchar in the district of Cachar and settled there permanently constructing (sic)es on Govt. land which was subsequently allotted to them. The Petitioner No. 2 is the wife of the Petitioner No. 1 and the Petitioners No. 3 to 5 are their children horn and brought up at Silchar within the toritory of India. It is further averred that the Petitioner No. 3 was bom in 1957, the Petitioner No. 4 was bom in 1959 and the Petitioner No. 5 was born in 1961. The Petitioner No. 3 was also a student of Haji

Keramatulla L.P. School and Govt. Boys' M.E. School situated at Silchar from year 1965 to 1977. That apart, the names of the Petitioners No. 1 and 2 also appeared in the voters list of 1966 for the Silchar Legislative Assembly Constituency against Sl. No. 194 and 195 respectively.

3. A reference u/s 8(1) of the Illegal Migrants (Determination) Tribunal Act, 1983 led to initiation of Silchar I/O Case No. 125/86 against the Petitioners. In the foresaid case before the Tribunal, the Petitioners in their written statement asserted that they were citizens of India and produced oral and documentary evidence. But the learned Tribunal after appreciation of evidence on record came to a finding that the Petitioners came to India on or after 25.3.71. The Petitioners being aggrieved by the aforesaid order of the learned Tribunal, preferred an appeal before the appellate Tribunal. But the appellate Tribunal without going into the merits of the case, rejected the same on the ground that the appeal is barred by time. Hence, the Petitioners moved this Court invoking its jurisdiction under Articles 226/227 of the Constitution.

4. The learned Counsel for the Petitioners Mr H.R.A. Choudhury argued that the learned appellate Tribunal ought to have decided the appeal on merit in view of the overwhelming evidence made available before the appellate Tribunal in support of their contention that they are the citizens of India. The impugned order of the learned Tribunal is at Annexure-3 of the writ petition. After going through the aforesaid order, it appears that the learned Tribunal at the first instance dismissed the appeal for the reason that it is barred by the law of limitation.

5. Mr. Choudhury further argued that the issue before the appellate Tribunal was of immense significance for the Petitioners, in as much as, they are liable to be deported to Bangladesh because of the acceptance of the reference by the learned Tribunal. Shri Choudhury also argued that the impugned order of the learned appellate Tribunal was passed on a technical ground without going into the merits and in a case of this nature, refusal to entertain the appeal for consideration on merit is violative of the principle of natural justice.

6. The learned Counsel for the State in keeping with norms of all fairness submitted that the learned appellate Tribunal should have decided the appeal on merit instead of rejecting it on the ground of limitation.

7. The object of the Illegal Migrants (Determination) Tribunal Act, 1983, is to establish the Tribunals for the purpose of speedy determination of persons who are illegal migrants and to expel them from India. The persons who have entered India on or after 25th day of March, 1971 fall within this category, if they are not in possession of any Valid passport or other travel document, either way it extends protection to the persons who entered India before 25th March 1971. In the instant case, the Tribunal held that the Petitioners entered India after the aforesaid date. But after going through the materials on record, this Court is of the opinion that proper appreciation of the evidence on record may, perhaps,

lead to a conclusion different from the one arrived at by the learned Tribunal. It is for this reason alone, re-appreciation of the evidence on record by the learned Appellate Tribunal is considered indispensable. Cause of justice cannot be thrown away on mere technicalities of law. The facet of natural justice varies from case to case and has to be applied in the given circumstances of each case.

8. Proviso to sub-section (9) of Section 15 of the Act of 1983 empowers the Appellate Tribunal to admit an appeal after the expiry of 30 days if it is satisfied that the Appellant was prevented by "sufficient cause" from preferring the appeal. The decision of the Supreme Court reported in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, lays down that the words "sufficient cause" are to be given a liberal construction so as to advance substantial justice. This Court has sensibly taken note of the reason given by the Petitioners to explain the delay. The reasons given, being distinguishable from deliberate negligence or inaction, the learned Appellate Tribunal should have decided the case on merit. The acceptance of the reference holding that the Petitioners entered into India on or after 25th March, 1971 itself posed a threat of imminent deportation of the Petitioner. Thus situated, no man of ordinary prudence is expected to keep his fingers crossed over such an issue unless some cogent circumstances prevail upon him from preferring the appeal within the time limit. In this context, condonation of delay of 26 days will simply be aid of justice. This Court, therefore, finds no justification but to exercise its writ jurisdiction to salvage the situation.

9. Consequently, this writ Petitioner stands allowed. The order dated 17.8.91 passed by the learned Appellate Tribunal is hereby quashed and the case is remanded back to the learned Appellate Tribunal for disposal of the same after hearing both the parties on merit. The Petitioners are directed to appear before the learned Appellate Tribunal on or before 5th January, 1998. The stay order granted by this Court vide order dated 10.11.93 shall remain in force till the disposal of appeal by the learned Appellate Tribunal.