
(2009) 08 GAU CK 0031
In the Gauhati High Court
Case No : Writ Petition (C) No. 577 of 2009

Abdul Awal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Foreigners Act, 1946 — Section 9

Citation : (2010) 1 GLR 159

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : H. Das and K.R. Patgiri, for the Appellant; R. Chakraborty, for the Respondent

Judgement

B.K. Sharma, J.—This writ petition has been filed challenging the legality and validity of the order dated 31.10.2008 passed by the Foreigners Tribunal, Goalpara in FT Case No. 965/G/2006 declaring the petitioner to be a foreigner (illegal Bangladeshi migrant) entering Assam after 25.3.1971.

2. I have heard Mr. H. Das, Learned Counsel for the petitioner as well as Ms. R. Chakraborty, learned Addl. Senior Government Advocate, Assam. None appears for the Union of India. I have also carefully examined the records of the Tribunal.

3. The case against the petitioner was initiated on the basis of the reference made by the State police suspecting him to be a foreigner. On receipt of notice from the Tribunal, the petitioner appeared on 31.7.2008 and prayed for time to file written statement, which was allowed fixing the matter on 7.8.2008. On that day also, same prayer was repeated and was allowed fixing the matter on 30.8.2008. In the order, it was made clear that the time granted would be the last chance.

4. On 30.8.2008, instead of filing the written statement and documents, the petitioner remained absent. However, his engaged Counsel filed an application praying for another date. Considering the earlier order dated 7.8.2008, the

prayer was rejected and the matter was fixed for ex parte hearing on 18.10.2008. On 18.10.2008 also, the petitioner remained absent without any step. The matter was again fixed on 27.10.2008, on which date also, the petitioner remained absent. Thereafter, the matter was fixed on 31.10.2008 for ex parte order. On 31.10.2008 also, the petitioner remained absent and consequently, on the basis of the materials on record and having regard to the burden of proof caste on the suspected foreigner u/s 9 of the Foreigners Act, 1946, which the petitioner failed to discharge, the Tribunal passed the impugned order dated 31.10.2008 declaring the petitioner to be an illegal Bangladeshi migrant entering Assam after 25.3.1971.

5. The Tribunal in its order dated 31.10.2008 has stated the facts in detail. The case of the petitioner was detected when intensive revision of Electoral Roll was carried out by way of door-to-door enumeration during the period from 16.1.1997 and 15.4.1997. It was found that there was no basis to include the name of the petitioner in the draft Electoral Roll and accordingly, the authority issued direction for verification etc. On verification, it was found that the name of the petitioner was illegally included in the draft Electoral Roll. Accordingly, the reference was made to the Illegal Migrants (Determination) Tribunal suspecting him to be an illegal migrant. After scrapping of the I.M.D.T. Act, the case was tried under the Foreigners Act, 1946. The petitioner having failed to discharge the burden of proof envisaged under the Foreigners Act, the Tribunal has passed the order on the basis of the case presented by the State.

6. In paragraph 5 of the writ petition, the petitioner has made statements regarding the proceeding before the Tribunal up to the stage of rejecting the prayer for adjournment on 30.8.2008. However, the petitioner has not even obliquely stated about the next dates fixed on 18.10.2008, 27.10.2008 and 31.10.2008, on which dates also, the petitioner did not appear without any step. The prayer of the petitioner for adjournment to file W/S although was rejected, but there was no indication that the evidence of the petitioner would never be accepted. Even after rejection of the prayer for adjournment on 30.8.2008 fixing the matter on 18.10.2008 and thereafter again on 27.10.2008 and 31.10.2008, the petitioner ought to have appeared and discharged his burden of proof as envisaged u/s 9 of the Foreigners act, 1946, which he miserably failed and has now invoked the writ jurisdiction of this Court withholding the aforesaid facts relating to the proceeding before the Tribunal.

7. The case of the petitioner makes interesting revelations. In paragraph 2 of the writ petition, the petitioner has described his father as "Moniruddin" and so also, in the affidavit sworn in support of the writ petition. Annexure-A is the purported N.R.C., certificate (photocopy) issued on 16.8.1989, wherein the name of one "Maynuddin" appears, who was only one year old whom the petitioner claims to be his father. The petitioner has also placed reliance on Annexure-B certificate (photocopy) dated 30.7.2008 purportedly issued by the particular Gaon Panchayat, wherein, the name of his father has been mentioned as "Moinuddin"

and not "Momruddin".

8. The proceeding against the petitioner before the Tribunal was initiated describing the father of the petitioner as "Moydan Ali" and not "Moniruddin" or "Moinuddin". The petitioner also received notice in that name without any objection. Rather, in the Vokatnama, he described his father as "Moydan Ail". Thus, the petitioner has taken recourse to falsehood in naming his father according to convenience, at times as "Moydan Ali, at times as "Moniruddin" and at times as "Moinuddin". However, there is no explanation as to why such variation is there. This aspect of the matter has been highlighted in the counter affidavit filed by the State. When the verification and/or enquiry was carried out, the petitioner described his father as "Moydan Ali" but coming to the writ court, he has named his father as "Moniruddin" but the documents he has placed reliance gives the name "Moinuddin".

9. There is another aspect of the matter. The petitioner has declared his age as 25 years in the affidavit sworn on 11.2.2009 in support of the statements made in the writ petition. The case came to the notice of the authority when his name found place in the draft Voter List of 1997. If the petitioner is now 25 years of age, in 1997, he would have been only 13 years of age and thus, could not have been a voter. In the verification report, the age of the petitioner is 18 years. The verification report is of 1997 and thus by now, the petitioner is aged about 30 years. If the petitioner is an Indian citizen, he could have produced documents including the linkage Voter List pertaining to his father and even the Voter List containing his name. It is not understood as to why there is not a single Voter List in the name of his father, if at all Annexure-A and Annexure-B documents (photocopies only) are relied upon. Law is well settled that photocopies are inadmissible in evidence. The Apex Court; in *Ran Suresh Singh v. Prabhat Singh* (2009) 6 SCC 681 declined to consider the Xerox copy of the particular certificate, holding the same to be inadmissible in evidence.

10. From the above narration of facts, there is absolutely no doubt that the petitioner has taken recourse to falsehood to remain in India though he is an illegal Bangladeshi migrant. No legally valid ground has been urged in the writ petition towards assailing the impugned order.

11. In view of the above, the writ petition is dismissed upholding the order of the Tribunal passed on 31.10.2008 by the Foreigners Tribunal, Goalpara in FT Case No. 965/G/2006. The Superintendent of Police, Goalpara is directed to apprehend the petitioner and keep him in custody till such time he is deported to Bangladesh.

12. List on 14.9.2009 for furnishing compliance report by the Superintendent of Police, Goalpara. The Registry is directed to send copies of this judgment and order to the Superintendent of Police, Goalpara and the Union of India. Another copy may be furnished to Ms. R. Chakraborty, learned Addl. Senior Government Advocate, Assam for necessary follow up action. Registry shall do the needful

forthwith.

13. L.C.R. be sent down to the Tribunal along with a copy of this judgment and order.