

(2009) 12 GAU CK 0058
In the Gauhati High Court
Case No : Writ Petition (C) No. 752 of 2009

Alek Uddin

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-12-2009

Acts Referred:

Citation : (2010) 2 GLD 127

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : K.P. Sarma, H. Das and K.R. Patgiri, for the Appellant; R. Chakraborty, Addl. Sr. Govt. Advocate for Assam and P. Das, CGSC (Home Department), for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The petitioner, who has been declared as foreigner (illegal Bangladeshi migrants) by the Foreigners' Tribunal, Goalpara in FT case No 1119/G/2006, has invoked the writ jurisdiction of this Court making a challenge to such declaration.

2. I have heard Mr. H. Das, learned Counsel for the petitioner as well as Mr. P. Das, learned CGSC. I have also heard Ms. R. Chakraborty, learned Addl. Sr. Govt. Advocate, Assam.

3. In the writ petition, it is the case of the petitioner that he is an Indian citizen by birth and his parents are also Indian citizens by birth. The petitioner has placed reliance on Annexure "A" NRC of 1951 containing the names of Romot Ali Sheikh and Ayna Bibi, who he claims to be his parents. The petitioner has also stated that his parents' name appeared in the Voter List of 1966. According to the petitioner, he was born in 1973 in village (130) Jhalar Alga, H-I where from he shifted to village (7) Khutamari under police station and district Goalpara.

4. The petitioner has also stated about inclusion of his name in the 1989 Voter List. According to him, in the 1997 Voter List, he was shown as doubtful voter.

5. The further statement made in the writ petition is that on receipt of the notice from the Tribunal, he had engaged a counsel to contest the case, who in turn filed Vokatnama along with a petition for adjournment on 5.8.2008. The prayer was granted. Thereafter, the petitioner made further prayer for adjournment and the same was granted upto 3.11.2008. It is the stand of the petitioner that the written statement was prepared, but could not be filed on 3.11.2008 as there was Assam Bandh given by All Assam Students' Union (AASU). According to the petitioner, on the next date, i.e. 4.11.2008, there was a protest call given by All Assam Lawyers' Association against the serial bomb blast in different places of Assam and there was a silent demonstration by the lawyers, who also abstained from their works. Accordingly, the written statement could not be filed on 4.11.2008. The Tribunal fixed the matter on 10.11.2008, on which date, the impugned ex parte judgment and order was passed.

6. According to the petitioner, it is in the aforesaid facts and circumstances, he could not properly respond to the proceedings before the Tribunal which resulted in ex parte proceeding and eventually, the impugned ex parte judgment and order was passed.

7. I have verified and gone through the records of the Tribunal, from which it appears that the petitioner, on receipt of notice, appeared before the Tribunal on 5.8.2008 and prayed for time to file W/S. The prayer was allowed fixing the matter on 18.8.2008. On 18.8.2008 also, the petitioner again prayed for time, which was allowed as a last chance fixing the matter on 10.9.2008. On 10.9.2008, the petitioner was absent. However, his engaged counsel prayer for time to file W/S and the same was allowed fixing the matter on 17.10.2008.

8. On 17.10.2008 also, the petitioner prayer for time to file W/s. Learned Tribunal having regard to the fact that a last chance was given to file W/S. declined to grant further time and ordered for ex parte proceeding fixing the matter on 3.11.2008. The matter was taken up on 4.11.2008 as there was Assam Bandh on 3.11.2008. On that day, the petitioner remained absent and the Tribunal, noticing the fact that no W/S was filed within the time granted, fixed the matter on 10.11.2008 for ex parte order. On 10.11.2008, the matter was taken up by the Tribunal and the impugned ex parte judgment and order was passed.

9. The records of the Tribunal have revealed that the petitioner filed application praying for setting aside the ex parte judgment and order dated 10.11.2008. The application was filed on 21.11.2008. Learned Tribunal by its, order dated 3.1.2009 rejected the prayer for setting aside the ex parte judgment and order. Such rejection was in respect of four cases including that of the petitioner. While rejecting the prayer, the Tribunal duly noticed the prayer of the petitioner for adjournment on 5.8.2008, 18.8.2008 and 10.9.2008 and that all the prayer were granted fixing the matter on 3.11.2008, on which date, there was Assam Bandh call given by AASU. The Tribunal has duly noticed that on 4.11.2008, neither the petitioner nor his counsel appeared before the Tribunal and did not take any

steps, for which, the matter was fixed on 10.11.2008 for ex parte order. On that day also, none appeared for the petitioner nor any steps were taken.

10. Referring to the particular provisions of the Code of Civil Procedure, the Tribunal has observed that whenever there is an application seeking vacation of the ex parte order, reasons must be assigned. The Tribunal has found that though there was a silent demonstration of the lawyers on 4.11.2008 but the particular advocate was ready to file W/S in another case namely, FT case No. 1130/H/06.

11. The Tribunal has rightly observed in its order dated 3.1.2009 that had the petition been filed along with W/S. perhaps things would have been different. The Tribunal has recorded its experience on 7.11.2008, on which date, the particular advocate entering into its chamber, verbally asked about the fate of his case in presence of the Asstt. Govt. Pleader/Although, W/S was shown to have been filed on 5.11.2008 but the Court seals therein were of 21.11.2008 and 10.12.2008. Thus, it was conclusively established that no W/s was filed on 5.11.2008 and it was the ill design on the part of the petitioner to show that the W/S was filed on 5.11.2008 by submitting the same on a subsequent date. Had the W/S been filed on 5.11.2008, there would have been endorsement of the Court, a fact the Tribunal has rightly noticed.

12. The Tribunal has also noticed that on 4.11.2008, in a number of cases the written statements were filed with the exception of 4(four) cases including the case of the petitioner in respect of which the order dated 3.1.2008⁹ was passed refusing to set aside the ex parte order. It has been recorded by the Tribunal that the Tribunal is overburdened with about 16,000 cases and thus, any amount of leniency in such matters would seriously tell upon the proceedings before the Tribunal.

13. The Tribunal after noticing all the aspects of the matter, refused to set aside the ex parte order and in my considered view, there is nothing wrong in it.

14. Even otherwise also, as noticed above, the petitioner has miserably failed to establish his case of Indian citizenship by birth. Merely placing reliance on certain documents without establishing any linkage to the same, the petitioner cannot claim Indian citizenship by birth.

15. It will be pertinent to mention here that the aforesaid order dated 3.1.2009 passed by the Tribunal declining to set aside the ex parte judgment and order was in respect of 4(four) cases including FT case No. 1119/G/2006 in respect of which the instant writ petition has been filed. The other 3(three) cases are-(1) FT case No. 1130/G/2006; (2) FT case No. 1122/G/2006 and (3) FT case No. 886/G/2006. The order dated 3.1.2009 is the common order in all the four cases. Challenging the said order dated 3.1.2009, the foreign national involved in FT case No. 1130/G/2006 had filed a writ petition being WP (C) No. 1166/2009 (Tara Bhanu v. Union of India and Ors.). The writ petition was dismissed by judgment and order dated 12.8.2009 upholding the said order dated 3.1.2009.

The order was carried on appeal vide WA No. 280/2009 and the writ appeal has also been dismissed vide order dated 14.9.2009.

16. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly, it is dismissed. The Superintendent of Police (B), Goalpara shall take the petitioner into custody, if not already taken and shall detain him in jail/ detention camp till such time he is deported/pushed back to Bangladesh. The Deputy Commissioner, Goalpara shall ensure deletion of the name of the petitioner from the Voter List, if any.

17. List the matter again on 29.1.2010 for submission of compliance report by the Superintendent of Police and the Deputy Commissioner, Goalpara in respect of the aforesaid directions.

18. Let copies of this judgment and order be sent to the Union of India in the Home Ministry; the Superintendent of Police (B), Goalpara and the Deputy Commissioner, Goalpara immediately. Another copy be also furnished to Ms. R. Chakraborty, learned Addl. Sr. Govt. Advocate, Assam for her necessary follow up action.

19. Registry shall send down the LCR immediately along with the copy of this judgment and order.