

(2018) 08 GAU CK 0001
In the Gauhati High Court
Case No : WP(C) NO.4971 Of 2018

Azmat Ali

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 01-08-2018

Acts Referred:

Foreigners Act, 1946 — Section 8, 9
Constitution of India 1950 — Article 355

Citation : (2018) 08 GAU CK 0001

Hon'ble Judges : ARUP KUMAR GOSWAMI, J; MANASH RANJAN PATHAK, J

Bench : Division Bench

Advocate : M.U. Mahmud, G. Sarma, J. Payeng, A.I. Ali, A. Verma

Final Decision : Dismissed

Judgement

A.K. Goswami, J.

1. Heard Mr. M.U. Mahmud, learned counsel for the petitioner. Also heard Ms. G. Sarma, learned Central Government counsel, appearing for the

respondent No.1, Mr. J. Payeng, learned special standing counsel, Foreigners Tribunal, appearing for the respondent Nos.2, 5, 6 & 7, Mr. A.I. Ali,

learned standing counsel, Election Commission of India, appearing for the respondent No.3 and Ms. A. Verma, learned standing counsel, NRC,

appearing for the respondent No.4.

2. Challenge in this writ petition is to an order dated 28.03.2017 passed by the learned Foreigners Tribunal (5th), Darrang at Mangaldai in F.T. (V)

Case No.1537/2016, whereby the petitioner was declared to be an illegal migrant of post-1971 stream and thus, liable to be pushed back.

3. A perusal of the order goes to show that notice being served upon the petitioner, the petitioner appeared before the learned Tribunal on 22.09.2016

and prayed for time to file written statement. On two subsequent dates, i.e. 25.11.2016 and 26.12.2016, the petitioner was present and had prayed for time, which was allowed. The case was, thereafter, fixed on 19.01.2017. The petitioner did not appear on that day and on the following dates, namely, 16.02.2017, 03.03.2017, 20.03.2017 and 23.03.2017. In such circumstances, the learned Tribunal had held that sufficient opportunities were granted to the petitioner, which he did not avail of.

4. Mr. Mahmud had drawn the attention of the Court to the statements made in Paragraph 7 of the writ petition to contend that the petitioner was suffering from illness and, therefore, appropriate steps could not be taken by him. He submits that an opportunity may be granted to the petitioner to contest the proceeding.

5. Mr. Payeng has submitted that the learned Tribunal was justified in passing the impugned order and, therefore, no interference is called for with the same. He also submits that medical documents annexed with the petition do not relate to the petitioner.

6. Learned counsel appearing for the respondents endorse the submission of Mr. Payeng.

7. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

8. In Paragraph 7 of the writ petition, the petitioner stated as follows:-

â??7. That the petitioner begs to state that a foreigner case was initiated against the petitioner, vide F.T. Case No.FT(V)1537/2016 in the

Foreignersâ?? Tribunal No.5, Darrang. After receipt of notice from the Ld. Tribunal, he appeared on 22-09-16 and took some time to file W.S. and

after 26-12-12, he could not appear before the Ld. Tribunal as he has been suffering Systematic Lupus Erythematosus (SLE) disorder with heavy

Chest and back pain. However, he could not avail medical treatment at the early stage and was taking domestic treatment at Home. As such, there is

medical proof to that effect. But, on 07-01-18 he started treatment at Tezpur Medical College Hospital and when no improvement is found, he came to

Gauhati Medical College Hospital and presently undergoing treatment. Consequently, the Ld. Tribunal proceeded the reference ex parte against the

petitioner and passed the impugned order, dated 28-03-17, whereby declared the petitioner as a foreigner of post 1971 stream.â??

Apparently, date 26.12.2012 is not correct and should have been 26.12.2016. If the petitioner was not availing any medical treatment, it is not

understood how he could say that he was suffering from Systemic Lupus Erythematosus (SLE), wrongly stated as 'Systematic Lupus

Erythematosus (SLE)'. It also appears that the word 'no' is dropped in the sentence 'As such, there is medical proof to that effect'.

9. The first medical document annexed by the petitioner at Page-28 of the writ petition is a Discharge Certificate of Tezpur Medical College &

Hospital dated 07.01.2018, which is in the name of Hazmad Ali. The name of the petitioner is Azmat Ali @ Amzad Ali. Page-29 of the writ petition is

a report of SRL Diagnostics Private Limited dated 08.01.2018, which is in the name of Mr. Hazmat Ali. The X-Ray report of Tezpur Medical College

& Hospital at Page-31, which is not dated, is in the name of H. Ali. Page-32 is an X-Ray Report without any name and date. These documents,

therefore, are not relatable to the petitioner. There is one X-Ray report dated 09.03.2017, which is in the name of Azmot Ali. There is also a discharge

certificate in the name of the petitioner showing that the petitioner was admitted to Gauhati Medical College & Hospital on 01.06.2018 and was

discharged on 11.06.2018.

10. The learned Tribunal had passed the impugned judgment on 28.03.2017 and, therefore, save and except the X-Ray report dated 09.03.2017 at

Page-30, there is no other medical document pertaining to a period prior to 28.03.2017. The petitioner has failed to establish that because of his health

condition, he could not appear before the learned Tribunal from 19.01.2017 till the judgment was delivered on 28.03.2017.

11. In Paragraph 8 of the writ petition, statement is also made that the petitioner was unaware of the impugned ex parte order dated 28.03.2017 till

25.05.2018.

12. When the petitioner was served with a notice, it was the duty of the petitioner to have enquired about the status of the case before the learned

Tribunal. The petitioner had not taken any such steps and that apart, for the reasons assigned hereinabove, we are also not inclined to take a view that

the petitioner was indeed suffering from ailment, as suggested by him.

13. Section 9 of the Foreigners Act, 1946 provides that if in any case not falling under Section 8, any question arises with reference to the Act or any

order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall notwithstanding anything contained in the Indian Evidence Act, 1872, shall lie upon such person.

14. In *Sarbananda Sonowal -Vs- Union of India*, reported in 2005 (5) SCC 665 at Paragraph 73, the Supreme Court had observed that the procedure

under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 is just, fair and reasonable and does not offend any constitutional provision.

In Paragraph 63, the Supreme Court had observed that there can be no manner of doubt that the State of Assam is facing external aggression and

internal disturbance on account of large-scale illegal migration of Bangladeshi nationals and that it, therefore, becomes the duty of the Union of India

to take all measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined in Article 355 of the

Constitution. In Paragraph 70, it was observed that the influx of Bangladeshi nationals who have illegally migrated into Assam pose a threat to the

integrity and security of the North-Eastern region and that their presence has changed the demographic character of that region and the local people

of Assam have been reduced to a status of minority in certain districts.

15. It is more than three decades that the issue of influx of foreign nationals has been in public domain in the State of Assam and has engaged the

attention of the people. Interest of the State is of paramount importance in that unabated influx has the potential to affect the integrity and sovereignty

of the country. Citizenship of a person, no doubt, is a very valuable right and should be zealously guarded. There is no gainsaying the fact that a person

who is alleged to be a foreigner must be given due and reasonable opportunity to establish that he is a citizen of India. However, if a person does not

take steps for safeguarding his interest, he does so at his own risk and peril as grant of opportunity cannot be an endless exercise. Right to a fair

hearing or principles of natural justice cannot be permitted to lead to a farcical situation and to be an engine for defeating the very object of

identification and deportation of foreigners.

16. In view of the above discussions, we find no good ground to interfere with

the impugned order dated 28.03.2017 passed by the learned Foreigners Tribunal (5th), Darrang at Mangaldai in F.T. (V) Case No.1537/2016 and accordingly, the writ petition is dismissed.