

(2018) 04 GAU CK 0014
In the Gauhati High Court
Case No : WP(C) 703 of 2017

CHANDRA MOHAN DAS

APPELLANT

Vs

THE UNION OF INDIA and 4 ORS.

RESPONDENT

Date of Decision : 09-04-2018

Acts Referred:

Illegal Migrants (Determination by Tribunals) Act, 1983 — Section 3(1)(c), 8(1)
Citizenship Act, 1955 — Section 5(1)(a), 6A
Foreigners' Act, 1946 — Section 9
State Emblem of India (Regulation of Use) Rules, 2007 — Rule 10(2)
Constitution of India, 1950 — Article 226

Citation : (2018) 04 GAU CK 0014

Hon'ble Judges : UJJAL BHUYAN, NELSON SAILO

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ujjal Bhuyan, J

1.This case was heard on 12.03.2018 and today is fixed for delivery of order.

2. Heard Mr G N Sahewalla, learned Senior Counsel, assisted by Mr P Deka, learned counsel for the petitioner and Mr A Kalita, learned Special Counsel, Foreignersâ?? Tribunal (FT).

3. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 19.12.2016, passed by the

Foreignersâ?? Tribunal, 2nd, Dhemaji at Silapathar (Tribunal)in FT (D) Case No. 2nd Dhemaji 1-09/2016 (State â??Vs- Reena Das and Chandra

Mohan Das), declaring them to be foreigners, who had illegally entered into India (Assam) from Bangladesh on or after 25.03.1971.

4. Be it stated that there were two proceedees in FT (D) Case No 2nd Dhemaji 1-09/2016, namely, Smt Reena Das, wife of Chandra Mohan Das and

Chandra Mohan Das, but this petition has been filed only by Chandra Mohan Das and not by Smt Reena Das, though both of them were declared to

be illegal foreigners by the Tribunal vide the impugned order dated 19.12.2016.

5. This Court, by order dated 09.02.2017, had issued notice while requisitioning the case record and passed an interim order to the effect that petitioner

should be allowed to remain on bail, subject to his appearance before the Superintendent of Police (Border), Dhemaji and furnishing of adequate surety.

6. Mr Sahewalla, learned Senior Counsel for the petitioner submits that evidence tendered by the petitioner were not controverted or objected to by

the State. Therefore, the same should be accepted. If it is accepted then petitioner had proved that he was not a foreigner but a citizen of India.

Therefore, Tribunal went wrong in declaring the petitioner to be a foreigner. In support of his submission, Mr Sahewalla has placed reliance in R V E

Venkatachala Gounder â?"Vs- Arulmigu Viswesaraswami; reported in (2003) 8 SCC 752. He also submits that son of the petitioner, Sri Ranjan Das,

was declared to be not a foreigner by the Foreignersâ?? Tribunal, Dhemaji-2nd at Silapathar vide order dated 31.05.2016, passed in FT (D) Case

No. 104 of 2016 (State â?"Vs Ranjan Das) and, therefore, the same benefit should be extended to the petitioner, being the father .

7. On a query by the Court, Mr Sahewalla submits that he is not aware of Smt Reena Das, wife of the petitioner, who was also declared to be a

foreigner by the Tribunal vide the impugned order and that he is also not aware as to whether any challenge has been made by Smt Reena Das to her

declaration as a foreigner.

8. On the other hand, Mr Kalita, learned Special Counsel has supported the order passed by the Tribunal by contending that the narrative presented by

the petitioner is full of contradictions and is not at all believable. Ranjan Das is not the son of the petitioner as would be evident from the order dated

31.05.2016, passed in the case of Ranjan Das. Contending that there is no merit in the writ petition, he seeks dismissal of the same.

9. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record, including the record requisitioned

from the Tribunal.

10. Record discloses that initially a reference was made by the Superintendent of

Police (Border), Dhemaji, under Section 8 (1) of the Illegal Migrants (Determination by Tribunals) Act, 1983 (IMDT Act), suspecting the proceedees to be illegal migrants. Be it stated that under Section 3 (1) (c) of the IMDT Act, an illegal migrant was defined as a foreigner, who had unauthorizedly entered into India after 25.03.1971. The reference was registered as Case No. IM (DMJ) 445/1991 before the Tribunal, constituted under the IMDT Act. There was no progress at all in the reference from 26.03.1991 till the time the IMDT Act was declared unconstitutional by the Supreme Court in *Sarbananda Sonowal vs- Union of India*, (2005) 5 SCC 665, wherein it was directed that all the references which were pending before the Tribunals constituted under the IMDT Act should be transferred to the Tribunals constituted under the Foreigners (Tribunal) Order, 1964, framed under the Foreigners Act, 1946.

11. Even then, there was complete standstill in the reference. It was only after receiving a fresh reference from the Superintendent of Police

(Border), Dhemaji under Order 2 (1) of the Foreigners (Tribunals) Order, 1964 that the related reference came to be registered before the Tribunal

following which notice was issued to the proceedee.

12. In his written statement filed before the Tribunal on 08.07.2016, petitioner identified himself as son of Krista Mohan Das, resident of Panbari

Shivnagar Nath basti, under Silapathar Police Station in the district of Dhemaji. He stated that his mother was Late Mohan Tara Das, who had

Citizenship Registration Certificate of the year 1966. Mother was a voter of Baghbar constituency in the then district of Kamrup in the year 1966.

Petitioner became a voter of Jonai constituency in the district of Dhemaji in 1993. Along with the written statement he filed a certificate of registration

in the name of Man Tara Das; voters list of 1966 where Mohan Tara Das was a voter of Baghbar constituency; voters list of 1993 where

Chandra Mohan Das was a voter of Jonai constituency and identity card issued by Election Commission of India in the name of Chandra Mohan Das,

son of Krista Mohan.

13. Therefore, from whatever were disclosed by the petitioner in his written statement, what is discernible is that according to the petitioner, he is the

son of Krista Mohan and Mohan Tara Das, who were citizens of India. Being their son, he was therefore a citizen of India.

14. Let us now examine as to whether petitioner could prove the above facts in issue.

15. In his deposition before the Tribunal on 23.11.2016, petitioner disclosed his age as 64 years, which would mean that he was born sometime in the

year 1952. Interestingly, in his deposition, he mentioned that his father's name was Late Krishna Mohan Das, while mother's name was

Montora Das. Thus, from a comparison between what was stated in the written statement and what was deposed before the Tribunal, it is seen that

while in the written statement, petitioner stated that his father was Krista Mohan Das, but in the deposition, he mentioned his father's name as

Krishna Mohan Das; in his written statement he mentioned that his mother was Mohan Tara Das, but in his evidence he mentioned that his mother

was Montora Das. In both the cases, there were subtle yet significant difference in the names, i.e., Krista Mohan Das and Krishna Mohan Das;

Mohan Tara Das and Montora Das.

16. Proceeding to the exhibits, we find that Exhibit-1 was a certificate of registration, whereby it was certified that Smt Montora Das, wife of Late

Krishna Mohan Das was registered as a citizen of India under Section 5 (1) (a) of the Citizenship Act, 1955. However, the other particulars in the

certificate of registration are illegible, wherefrom nothing is discernible except the date 30.04.1966. Even if we accept this certificate of registration at

its face value though the certificate appears to be questionable, it was only in respect of Montora Das; there is no certificate of registration as a citizen

of India either of Krista Mohan Das or of Krishna Mohan Das. For that matter, there was no certificate of registration in respect of Chandra Mohan

Das, though he was born in 1952 as per his deposition and in the ordinary course would have entered into India along with his parents and would have

claimed citizenship by registration. But nothing of that sort is available in the record.

17. Exhibit-2 is stated to be a residence/linkage certificate dated 21.11.2016, issued by the Secretary of Mukhtiar Gaon Panchayat, certifying that

Chandra Mohan Das was the son of Late Krista Mohan Das and Montora Das. This certificate cannot be accepted as a valid and admissible piece of

evidence for more than one reason. Firstly, under Rule-10 (2) and Schedule-1 of the State Emblem of India (Regulation of Use) Rules, 2007, framed

under the State Emblem of India (Prohibition of Improper Use) Act, 2005, Panchayati Raj Institutions, such as Gaon Panchayats, are not authorized to

emboss the State Emblem of India in certificates or official correspondence made by such institutions. But in Exhibit-2 certificate, the State Emblem of

India is embossed right at the top middle portion of the certificate, besides two round seals also containing the State Emblem. Such unauthorized use of

the State Emblem of India has rendered this certificate inadmissible in evidence.

17.1. Secondly, we have already noticed that the initial reference was made way back in the year 1991. This certificate was obtained 25 years

thereafter in the year 2016. Such belated issuance of certificate would certainly cast serious doubts about the bonafides of the certificate itself. Thus,

credibility of the certificate becomes questionable.

17.2. Thirdly, the author of the certificate, i.e., the Gaon Panchayat Secretary did not appear before the Tribunal and did not depose on the basis of

contemporaneous record to prove the said certificate as well as the contents thereof. Therefore, this certificate was not proved.

17.3. Fourthly, even if we accept the certificate at its face value, it only says that Chandra Mohan Das was the son of Krista Mohan Das and

Montora Das, whereas, according to the petitioner's oral deposition his father was Krishna Mohan Das and not Krista Mohan Das. Again, in the

written statement the mother was Mohan Tora Das and not Montora Das.

17.4. Finally, in *Rupjan Begum vs Union of India*; reported in (2018) 1 SCC 579, Supreme Court has held that Gaon Panchayat certificate is

primarily a linkage document of married women linking them with their parents. However, such a certificate by itself is no proof of citizenship. This

certificate has to be verified at two stages, namely, authentication of the certificate itself and verification of the contents. Petitioner is not a married

woman; further there is nothing on record to show that Exhibit -2 was subjected to any kind of verification. In such circumstances, Exhibit-2 has no

probative value, besides being inadmissible in evidence.

18. These were the only two documents exhibited by the petitioner.

19. However, we find that along with the written statement petitioner had filed a few documents, which though not exhibited we have examined the

same. One such document is a photostat copy of the voters' list of 1966 in respect of Baghbar constituency. Here, the three voters were Jay

Kumar Das, son of Krista Mohan, aged 30 years; Ram Kumar Das, son of Krista Mohan, aged 32 years; and Mohan Tora Das, wife of Krista

Mohan, aged 55 years. First of all, the name of the third voter is Mohan Tora Das, wife of Krista Mohan, which is a different name from Montora

Das, wife of Krishna Mohan Das. Secondly, Mohan Tara Das was a resident of village Mondia Bordoloni under Baghbar Police Station, in the then

district of Kamrup, whereas petitioner claims to be a resident of Silapathar of Dhemaji district, two different places altogether. If we go back to

Exhibit-1, we find that certificate of registration of Montora Das was dated 30.04.1966. If Montora Das became a citizen of India on 30.04.1966, her

name could not have figured in the 1966 voters' list, which was prepared by taking 01.01.1966 as the qualifying date. Therefore, it is evident that

Mohan Tora Das, wife of Krista Mohan is not the same person as Montora Das, wife of Krishna Mohan Das.

20. Then the pertinent question is what happened to Krista Mohan? Why his name did not appear in the voters' list of 1966? Who were Jay

Kumar Das and Ram Kumar Das? There are no explanations to these questions.

21. Another document filed by the petitioner was a photocopy of the voters' list of 1993 in respect of Jonai constituency, where the two voters

were Chandra Mohan Das, son of Krishna Mohan, aged 50 years; and Sonati, wife of Chandra Mohan, aged 28 years. They were residents of

Panbari Shivnagar Village under Silapathar Police Station. If Chandra Mohan Das was 50 years of age in 1993, it would mean that he was born

sometime in the year 1943. If that be so, he would have been eligible to exercise his franchise in 1964. As such, his name ought to have figured in the

1966 voters' list along with Mohan Tara Das and Krishna Mohan, but that is not to be. Again, why name of Mohan Tara Das did not figure in the

1993 voters' list? There are no explanations. Related question is when did the family shift from Mondia Bordoloni village under Baghbar Police

Station to Panbari Shivnagar Village under Silapathar Police Station? Here also, there are no explanations. That apart, as per petitioners'

deposition, he was born in 1952, but as per the 1993 voters' list, he was born in 1943. Therefore, no reliance can be placed on such a document.

22. The other document, that is the identity card stated to have been issued by the Election Commission of India on the face of it, appears to be

questionable and was also not proved. It is trite that mere entry in votersâ?? list or having an identity card is no proof of citizenship. It has to be

supported by other tangible and corroborative evidence which inspires the confidence of the Court.

23. In so far the decision in RVE Venkatachala Gounder (supra) is concerned, the same would be of no assistance to the petitioner because even if

the documents relied upon by the petitioner are accepted at their face value, those do not prove the case of the petitioner in any manner.

24. In so far the decision in the case of Ranjan Das is concerned, firstly, neither in his written statement nor in his deposition before the Tribunal did

the petitioner mention that he had a son by the name of Ranjan Das. In the case of Ranjan Das, the Tribunalâ??s order is dated 31.05.2016, whereas

in the case of the petitioner, Tribunal passed the impugned order subsequently on 19.12.2016. If the son was declared to be not a foreigner by the

Tribunal, certainly petitioner would have produced the said order before the Tribunal. This is normal human behaviour but petitioner did not do any

such thing. Further Ranjan Das could have deposed in the case of the petitioner to say that he was the son of the petitioner and he was found to be

not a foreigner by the Tribunal, But Ranjan Das did not depose before the Tribunal. Moreover, a perusal of the order dated 31.05.2016, passed in the

case of Ranjan Das would go to show that one Chand Mohan Biswas had deposed as father of Sri Ranjan Das. When we queried Mr Sahewalla as to

whether petitioner had deposed before the Tribunal in the case of Ranjan Das, he stated that he had no instructions to that effect. On the face of it,

Chand Mohan Biswas is not the same as Chandra Mohan Das! That apart, Ranjan Das was a resident of village Chengajan Bogoribari, whereas,

petitioner was a resident of Panbari Shivrinar Village, two different addresses. Therefore, it is evident that Ranjan Das is not the son of petitioner

Chandra Mohan Das. Petitioner had only tried to take advantage of the order passed in the case of Ranjan Das before the writ Court, taking

advantage of similar sounding names.

25. Net result of the above discussion is that petitioner had failed to discharge his burden under Section 9 of the Foreignersâ?? Act, 1946 to establish

his linkage with an Indian parent, relatable to a period prior to 25.03.1971, which is the cut-off date for identification of foreigners in the State of

Assam as per Section 6-A of the Citizenship Act, 1955, as amended. Presence of Krishna Mohan Das or Krista Mohan Das in India prior to

25.03.1971 could not be proved; so also petitioner's linkage with either Krishna Mohan Das or Krista Mohan Das, whom he claimed to be his

father.

26. In such circumstances, we do not find any merit in the writ petition, which is accordingly dismissed. Interim order passed earlier stands vacated.

27. Registry to send down the LCR and inform the concerned Foreigners' Tribunal, Superintendent of Police (Border) and Deputy Commissioner

for taking necessary follow-up steps.

28. A copy of this order may also be furnished to learned Standing Counsel, Election Commission of India and National Register of Citizens (NRC),

for doing the needful.