
(2009) 08 GAU CK 0030
In the Gauhati High Court
Case No : Writ Petition (C) No. 5545 of 2008

Gopal Ch. Das

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 140

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : A.K. Sarkar and B. Gogoi, for the Appellant; R. Chakraborty, for the Respondent

Judgement

B.K. Sharma, J.—The petitioner, who has been declared to be a foreigner (illegal Bangladeshi migrant) has invoked the writ jurisdiction of this Court, making a grievance against such declaration made by the Foreigners Tribunal.

2. In response to the reference made by the State, the Foreigners Tribunal registered FT Case No. 123/2006 against the petitioner and by the impugned judgment and order dated 4.2.2008 has answered the reference in favour of the State and against the petitioner. Hence, this writ petition.

3. I have heard Mr. A.K. Sarkar, Learned Counsel for the petitioner as well as Ms. R. Chakraborty, learned Addl. Senior Government Advocate, Assam. None represents the Union of India. I have also carefully gone through the records of the Tribunal.

4. In this case also, the impugned judgment and order is ex parte because of non-participation of the petitioner before the Tribunal. In paragraph 5 of the writ petition, the petitioner has stated that after engaging the Counsel in the proceeding before the Tribunal, he was completely dependant on him and it was only on serving of the order dated 4.2.2008, the petitioner could come to know that the same was ex parte.

5. The records of the Tribunal speak otherwise. On receipt of the notice from the Tribunal, the petitioner duly appeared before the Tribunal on 25.9.2006 and prayed for time to file written statement, which was allowed fixing the matter on 9.11.2006. On 9.11.2006 the petitioner appeared and prayed for time which was also granted fixing the matter on 7.12.2006. On the next date fixed, which was 2.1.2007, the petitioner appeared before the Tribunal. While on 7.12.2006, the prayer for adjournment was made, but on 2.1.2007, the petitioner filed written statement and photocopies of some documents.

6. On the next date fixed, i.e., 1.2.2007, the petitioner remained absent without any steps, but again appeared on the next dates, i.e., 23.2.2007 and 26.3.2007. Thereafter, on all subsequent dates, namely, 26.4.2007, 30.5.2007, 29.6.2007, 31.7.2007, 7.9.2007, 11.10.2007, 16.11.2007, 6.12.2007, 3.1.2008 and finally, on 4.2.2008, when the impugned ex parte order was passed, the petitioner all along remained absent.

7. The above revelation from the records of the Tribunal has not even obliquely been stated in the writ petition and the only statement made is that after filing the written statement, he was completely dependant on his engaged counsel. When the mandatory requirement is to discharge the burden of proof to establish the Indian citizenship, as envisaged u/s 9 of the Foreigners Act, 1946, the petitioner and for that matter, any foreign national cannot take the plea that he was dependant on his engaged counsel. In the instant case, the engaged Counsel is not named and no allegation has been made against him.

8. The photocopies of the documents annexed to the written statement are of no consequence as the same are not admissible in evidence. In paragraph 3 of the writ petition, the petitioner has stated that after attaining majority, his name was included in the Voter List of 1977 (Annexure w-4 photocopy). However, contrary to such a stand in the written statement, the petitioner enclosed a photocopy of the Voter List of 1972 indicating the name of one Gopal Chandra Das, aged 22 years. But in Annexure-4 1977 Voter List, the age of the petitioner is shown as 23 years.

9. As per the declaration made in the writ petition, the petitioner is aged 56 years. If that be so, it is not understood as to why his name was not included in any of the Voter List not to speak of other documents, which can be said to be reliable.

10. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly, it is dismissed. The Superintendent of Police, Nagaon shall take the petitioner into custody immediately and deport him to Bangladesh.

11. List on 14.9.2009 for furnishing compliance report by the Superintendent of Police, Nagaon. Let copies of this judgment and order be forwarded to the Union of India and the Superintendent of Police Nagaon forthwith. Another copy of this judgment and order be furnished to Ms. R. Chakraborty, learned Addl. Senior Government Advocate, Assam for her necessary follow up action.

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