

(2015) 07 GAU CK 0053
In the Gauhati High Court
Case No : WP(C) No. 7341 of 2013

Isaque and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Foreigners Act, 1946 — Section 9

Citation : (2015) 4 GLT 561

Hon'ble Judges : Biplab Kumar Sharma, J.

Bench : Single Bench

Advocate : A. Roshid, A. Mobarague and T. Begum, Advocates, for the Appellant; S.C. Keyal, Assistant Solicitor of India and S.K. Nur Mohammad, G.A., for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—This writ petition is directed against the order dated 25th November, 2013 passed by the learned Member, Foreigners' Tribunal (1st), Morigaon in F.T. Case No. 79/2010 (Police Reference F.T. Case No. 343/2009) (State of Assam Vs. Md. Isaque Ali & Ors.). I have heard Mr. A. Roshid, learned counsel for the petitioners. Also heard Mr. S.C. Keyal, learned Assistant Solicitor General of India and have also heard Mr. Sk. Nur Mohammad, learned State counsel. I have also perused the entire materials on record, including the record received from the Tribunal.

2. In the proceeding before the Tribunal, the petitioners placed reliance on certain documents, which are photocopy of the voter list of 1965; photocopy of Jamabandi; photocopy of another voter list of 1965; photocopy of voter list of 1970; photocopy of voter list of 1985; photocopy of voter list of 1997; photocopy of voter list of 2005; photocopy of voter list of 2011; Jamabandi; school certificate, Gaon Panchayat Certificate; Gaon Burah's certificate.

3. Referring to the said documents, the learned Tribunal having found the

discrepancies, as discussed in the impugned judgment, has held that the petitioners failed to discharge their burden of proof as envisaged under Section 9 of the Foreigners Act, 1946. As per Exhibit-Ka voter list of 1965, the projected father of the petitioner is Imaan Ali, whose father is described as Panju Seikh. But on the other hand, as per Exhibit-Kha Jamabandi, the father of Imaan Ali is Piru. Similarly in the other documents also there is variation in the name of the petitioner and his father including their age. While in Exhibit-Onga voter list of 1985, the age of the person projected as the petitioner No. 1 is 39 years and that of his wife identified as Nureja as 23 years but in Exhibit-Cha voter list of 1997, the projected petitioner No. 1 and his wife (petitioner No. 2) are aged about 45 years and 37 years, respectively.

4. All the above aspects of the matter have been discussed in paragraphs 3 and 4 of the impugned judgment, which are quoted below:-

"(3) I have carefully perused the records and heard argument from both sides. After a careful scrutiny of the documents proved and exhibited, what I find is that there are some discrepancies in the name and age of the voters, Isahoque and his wife, Nur Nehar. As per Ext. "Ka", the voter, Imaan Ali, purported father of O.P. No. 1 is the son of Panju Seikh (relation was not mentioned), aged 55 years. But as per Ext. "Kha", the copy of Jamabandi, 1968-69, Imaan Ali is the son of Piru. The person prosecuted as O.P. No. 1 is Isaque Ali, S/o. Lt. Iman Ali. As per Ext. "Onga", the voters are Isahoque, S/o-Imaan, aged 39 years and Nureja, W/o-Isahoque, aged 23 years. As such, the wife of Isahoque is Nureja. But as per Ext. "Cha", the voter, Isahoque Ali is the son of Imaan, aged 45 years and the voter, Nur Nehar is the wife of Isahoque, aged 37 years. As such, his age must have been 51 years in 1997, but in Ext. "Cha", the voter, Isahoque Ali, S/o. Imaan is shown as 45 years only. Similarly in Ext. "Ja", the voter is shown as Isaque Ali, S/o. Imaan, aged 52 years and the voter, Nur Nehar, W/o. Isaque Ali is shown as 44 years old. There are differences in age of the voters. In Ext. "Jha", also, the name of the voters are mentioned as Isaque Ali, S/o. Imaan Ali, aged 59 years and Nur Nehar. W/o. Isaque Ali, aged 51 years. There is also difference of age from 2005 to 2011. In Ext. "Niya", the copy of Jamabandi, the land holder has been shown as Isahoque Ali, S/o. Imaan Ali on 29.12.2003. As such, there are differences in the name of the voter, Isahoque Ali, Isahoque and Isaque Ali in the voter lists, 1985, 1997, 2005 and 2011. As per evidence of O.P.W.-1, Lal Mamood is the father of his mother, Nur Neha. As per Ext. "Ga", the voter list, 1965, the voter, Lal Mamood is shown as 39 years old. The said Lal Mamood has been shown as 40 years old in 1970 which must have been 44 years. Similarly, Anjoob Khatoon has been shown as wife of Lal Mamood in Ext. "Ga", but in Ext. "Gha", Anjima Khatoon has been shown as wife of Lal Mamood. No relationship of the voter, Lal Mamood has been shown with Soibali in Exts. "Ga" and "Gha".

(4) After summing up the records, it is found that there are much differences in the names and age of the voters, Isahoque Ali, Isahoque and Isaque Ali and also

in the name of his wife. Similarly, there is discrepancy in respect of age of voter, Lal Mamood, purported father of O.P. No. 2, Nur Neha. It is very dangerous to confer Indian citizenship with such discrepancies in name and age of the voters. As per prosecution records, the person prosecuted as O.P. No. 1 is Isaque Ali, S/o. Lt Iman AIL, but there are three names for O/P. No. 1 in the voter lists as Isahoque, Isaque Ali and Isahoque Ali. O.P. No. 3, Md. Nur Muhammad while deposing on oath described the name of his father as Isaque Ali, but subsequently he shifted the name of his father and said somewhere that Isahoque Ali is his father. It also appears from the statement of the witnesses recorded by the Police Officer during investigation that the Gaonburha, Shri Ram Kishore Prasad and the V.D.P. Secretary, Md. Aiyub Ali knew Isaque Ali as son of Iman Ali."

5. The Tribunal having discussed the entire evidences and it being not a case of perverse finding, this Court exercising its writ jurisdiction cannot re-appreciate the said evidence sitting on appeal like an appellate Court. The scope, ambit and jurisdiction of the writ Court in such matter has been discussed by the Full Bench in its decision in *The State of Assam and Others Vs. Moslem Mondal and Others*, . For a ready reference, paragraphs 112 and 113 of the said judgment are quoted below:-

"112. Article 226 of the Constitution confers on the High Court power to issue appropriate writ to any person or authority within its territorial jurisdiction. The Tribunal constituted under the 1946 Act read with the 1964 Order, as noticed above, is required to discharge the quasi-judicial function. The High Court, therefore, has the power under Article 226 of the Constitution to issue writ of certiorari quashing the decision of the Tribunal in an appropriate case. The scope of interference with the Tribunal's order, in exercise of the jurisdiction under Article 226 , however, is limited. The writ of certiorari can be issued for correcting errors of jurisdiction, as and when the inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it or if such Court or Tribunal acts illegally in exercise of its undoubted jurisdiction, or when it decides without giving the opportunity to the parties to be heard or violates the principles of natural justice. The certiorari jurisdiction of the writ Court being supervisory and not appellate jurisdiction, the Court cannot review the findings of facts reached by the inferior Court or Tribunal. There is, however, an exception to the said general proposition, in as much as, the writ of certiorari can be issued and the decision of a Tribunal on a finding of fact can be interfered with, if in recording such a finding the Tribunal has acted on evidence which is legally inadmissible or has refused to admit admissible evidence or if the finding is not supported by any evidence at all, because in such cases such error would amount to an error of law apparent on the face of the record. The other errors of fact, however grave it may be, cannot be corrected by a writ court. As noticed above, the judicial review of the order passed by the inferior Court or the Tribunal, in exercise of the jurisdiction under Article 226 of the Constitution, is limited to correction of errors apparent on the face of the record, which also takes within its fold a case where

a statutory authority exercising its discretionary jurisdiction did not take into consideration a relevant fact or renders its decision on wholly irrelevant factors. Hence, the failure of taking into account the relevant facts or consideration of irrelevant factors, which has a bearing on the decision of the inferior court or the Tribunal, can be a ground for interference of the Court or Tribunal's decision in exercise of me writ jurisdiction by the High Court.

113. The Apex Court in *Sant Lal Gupta and Others Vs. Modern Co-operative Group Housing Society Ltd. and Others*, , reiterating the grounds on which a writ of certiorari can be issued, has opined that such a writ can be issued only when there is a failure of justice and cannot be issued merely because it may be legally permissible to do so. It is obligatory on the part of the petitioners to show that a jurisdictional error has been committed by the statutory authority. There must be an error apparent on the face of the record, as the High Court acts merely in a supervisory capacity and not as the appellate authority. An error apparent on the face of the records means an error which strikes one on their looking and does not need long drawn out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matters to show its incorrectness. Such error may include giving reasons that are bad in law or inconsistent, unintelligible or inadequate. It may also include the application of a wrong legal test to the facts found, taking irrelevant consideration into account and failing to take relevant consideration into account, and wrongful admission or exclusion of evidence as well as arriving at a conclusion without any supporting evidence. Such a writ can also be issued when there is an error in jurisdiction or authority whose order is to be reviewed has acted without jurisdiction or in excess of its jurisdiction or has failed to exercise the jurisdiction vested in him by law."

6. For all the aforesaid reasons, I see no reason to interfere with the impugned order dated 25th November, 2013 passed by the learned Member, Foreigners' Tribunal (1st), Morigaon in F.T. Case No. 79/2010 (Police Reference F.T. Case No. 343/2009) (*State of Assam Vs. Md. Isaque Ali & 4 Ors.*) and accordingly, the writ petition is dismissed. Consequently, the Superintendent of Police (Border), Morigaon, shall take the petitioners into custody and detain them in the detention camp forthwith till such time they are deported to their country of origin. Simultaneously, the Deputy Commissioner, Morigaon shall ensure deletion of their names from the voter list, if found.

7. The Registry shall transmit the case records to the Foreigners Tribunal (1st), Morigaon, Assam, alongwith a copy of this order.

8. Copies of this order shall be sent to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi; Commissioner & Secretary to the Government of Assam, Home Department, Dispur; the Superintendent of Police (Border), Morigaon and the Deputy Commissioner, Morigaon. Another copy of this order shall also be furnished to Mr. Sk. Nur Mohammad, learned State counsel, for his necessary follow up action. List the matter after 1 (one) month

for submission of report by the Superintendent of Police (Border) and the Deputy Commissioner, Morigaon.