
(2016) 01 GAU CK 0060
In the Gauhati High Court
Case No : W.P(c) No. 2237 of 2014.

Jalaluddin and Ors

APPELLANT

Vs

Union Of India and Ors

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

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

Citation : (2016) 3 GauLJ 304 : (2016) 2 GauLT 991

Hon'ble Judges : B.K. Sharma;Manojit Bhuyan, JJ.

Bench : Division Bench

Advocate : H.R.A. Choudhury, Sr. Advocate and A. Matin, Advocate, for the Appellant; M. Bhagabati, State Counsel, G. Sarma and S.C. Keyal, A.S.G.I, for the Respondent

Final Decision : Disposed Off

Judgement

B.K. Sharma, J - We have heard Mr. H.R.A. Choudhury, learned senior counsel assisted by Mr. A. Matin, learned counsel for the petitioners. Also heard Mr. M. Bhagabati, learned State Counsel and so also Ms. G. Sarma, learned counsel holding for Mr. S.C. Keyal, learned ASGI. We have also perused the entire materials on record along with the records received from the learned Tribunal.

2. This writ petition is directed against the order dated 10/03/2014 passed by the learned Member, Foreigners Tribunal (2nd), Morigaon, Assam in Case No. FT (C) 185/09 [IM(D)T Case No. 757/02 dated 31/07/2002] (State of Assam v. Md. Jalaluddin and Ors). By the said order, the petitioners have been declared to be foreigners of post 25/03/1971.

3. Appearing in the Tribunal, the petitioner No.1 projected his father as Abdul Ali and placed reliance on the Ext. - Ka to Ext. - Ta, which include the voters" list of 1966 containing the name of Abdul Ali aged 40 years i.e. the projected father of the petitioner No. 1 ; another voters" list of 1966 containing the name of Sabed Ali Munshi aged 48 years, whom the petitioners projected as the father of

petitioner NO. 2 ; voters" list of 1985 containing the names of the petitioners No. 1 and 2, aged 33 and 24 years ; voters" list of 2010 containing the names of the petitioners No. 1 and 2, aged 40 and 35 years along with the petitioner No. 3, aged 25 years. Other documents on which the petitioners placed reliance are residential certificates and school certificates of 2011 and 2008 including one Land Revenue Paying Receipt (undated).

4. On a bare perusal of the above documents, it is found that the petitioner Nos. 1 and 2 were aged 33 and 24 years in 1985, but became 40 and 35 years of age in 2010 (after 15 years). Similarly, the petitioners could not produce any other document in respect of their projected fathers" namely, Abdul Ali and Sabed Ali Munshi, except the voters" list of 1966. Mere inclusion and projection of names appearing in the voters list is also not a conclusive evidence of citizenship.

5. The learned Tribunal discussing the entire evidence on record, recorded the apparent discrepancies in para 8 of the judgement. Relevant findings are quoted below :-

"8. The D.W-3, Anjar Hussen exhibited some documents filed with the record. Ext. "Gha" copy of voter list of 1966 in the name of Abdul Ali, S/O. Ismail. Ext. "Unga" copy of voter list of 1966 of Samed Ali Munchi but the D.W 1 village Headman and O.P. stated that his wife Rajia Khatun was the daughter of Samed Ali but name of exhibited document is differed as such as not relevant. Ext. "Cha" and Ext. "Chha" are copies of voter lists of 1985 and 2010 of Jalal Uddin Rejia Khatun but ages shown in these voter lists are not tally with the I.O's report. Ext. "Ja" and Ext. "Jha" certificate by the President of Borchala Gaon Panchayat, obtained on 10.05.2011 and 12.05.11 respectively of Jalal Uddin and Rejia Khatun after the proceeding. In both certificates nowhere mentioned length of staying therein. Ext. "Nia" school certificates in the name of Md. Anjar Hussen showing date of birth on 20.12.1985. Ext. "Ta" school certificate in the name of Rajiya Khatun. Ext. "Tha" school certificate in the name of Toslima Khatun. Ext. "Da" school certificate in the name of Nazmin Sultana. Ext. "Dha" school certificate in the name of Masuma Khatun. Ext. "Na" school certificate in the name of Najima Khatun. Ext. "Ta" Ext. "Tha" Ext. "Da" and Ext. "Dha" certificates were obtained on 10.05.2011, 19.05.2011, 31.12.2008 and 19.05.2011 but issuing authorities were not examined to prove these certificates. In Ext. "Nia" and Ext. "Na" certificates nowhere mentioned issue date by authority. Moreover the issuing authorities were not examined to prove genuineness of the same. Ext. "Taa" one revenue paying receipt dated 11.05.2011 in respect of annual patta No. 197. Except this revenue paying receipt no other receipt filed with the record. Though patta No. 197 mentioned there no such patta filed with the record. It appears that in Ext. "Gha" voter list, there is over written of centre number but no initial signature below the over written. Though O.P.'s side filed copy of voter list of 1966 (Ext. "Gha") in the name of Abdul Ali but no other voter list found in his name. The copy of voter list filed in the name of O.P. Jalal Uddin and Rejia Khatun of 1985 and 2010 but no earlier voter list filed with the record."

6. The learned Tribunal having appreciated the evidence on record in their true perspective, this Court exercising writ jurisdiction cannot sit on appeal over such finding. The petitioners miserably failed to establish any linkage by adducing cogent and reliable evidence to discharge their burden of proof as envisaged under section 9 of the Foreigners Act, 1946.

7. The scope, ambit and jurisdiction of the Writ Court in such matters have been well defined by the Full Bench of this Court in *State of Assam v. Moslem Mondal and others* reported in 2013 (1) GLT 809. In this connection, para 112 and 113 of the said full Bench decision is reproduced 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 an 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 the writ jurisdiction by the High Court.

113. The Apex Court in *Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd.* reported in (2010)13 SCC 336, 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 mere 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."

8. Above apart, as has been held by the Apex Court in LIC of India v. Ram Pal Singh Bisen reported in 2010 (4) SCC 491 mere production of some documents or exhibiting the same without proving the contents thereof is not enough. In this connection, para 25 and 31 of the judgement is quoted below :-

"25. We are of the firm opinion that mere admission of a document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law.

31. Under the Law of Evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the Court. Contents of the document cannot be proved by merely filing in a court."

9. In view of the above, we do not find any merit in the writ petition and accordingly it is dismissed. Now, the Superintendent of Police (B), Morigaon shall ensure that the petitioners are arrested and detained in the detention camp till their deportation to their country of origin i.e. Bangladesh.

10. Let the matter be listed again after one month so as to submit report by the Superintendent of Police (B) Morigaon about the action taken in the terms of this order.

11. The Deputy Commissioner, Morigaon shall ensure deletion of the names of the petitioners from the voter list, if any. He will also ensure that the names of the petitioners should not enter into the ongoing NRC Register.

12. Registry shall send down the case records to the learned court below along with a copy of this judgement and order. A copy of the judgement and order may also be furnished to Mr. M. Bhagabati, learned State Counsel for his immediate necessary follow up action. Copies shall also be sent to the SP(B), Morigaon and Deputy Commissioner, Morigaon, for their immediate follow up action.