
(2000) 01 GAU CK 0037
In the Gauhati High Court
Case No : Civil Rule No. 2501 of 1998

Kamaluddin (MD)

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 27-01-2000

Acts Referred:

Citation : (2000) 2 GLT 79

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : M.K. Choudhry and P.C. Kalita, for the Appellant; H. Rahman, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—This writ application has been filed by the Petitioner for issue of a Mandamus directing the authority, more particularly Respondent No. 4 not to deport him from India. The claim is that the Petitioner is a citizen of India and he can be deported without following the due process of law as laid down. There is a further prayer not to harass and intimidate the Petitioner.

2. The case of the Petitioner is that he is a citizen of India and resident of village-Kapashbari, P.O.-Murajhar, District-Nagaon. It is also claimed that he possesses land at the particular village. It is further asserted by the Petitioner that his name was inserted in the Electoral Roll as published from time to time. The Petitioner even contested the last Election in the year 1996 from No. 90, Jamunamukh Legislative Assembly Constituency. It is claimed that as such the Petitioner can not be deported from India without resorting to the provisions of Illegal Migrants Determination Act. The object of that Act is to provide for the establishment of Tribunal for the determination in a fair manner, of the question whether a person is an illegal migrant to enable the Central Government to expel illegal migrants from India and for matters connected therewith or incidental thereto. The object of the Act is as follows:

Whereas a good number of the foreigners who migrated into India across the borders of the eastern and north-eastern regions of the country on and after the 25th day of March, 1971, have, by taking advantage of the circumstances of such migration and their ethnic similarities and other connections with the people of India and without having in their possession any lawful authority so to do, illegally remained in India;

And whereas the continuance of such foreigners in India is detrimental to the interests of the public of India.

And whereas on account of the number of such foreigners and the manner in which such foreigners have clandestinely been trying to pass off as citizen of India and all other relevant circumstances, it is necessary for the protection of the citizens of India to make special provisions for the detection of such foreigners in Assam and also in any other part of India in which such foreigners may be found to have remained illegally." It is not the law that if there is clinching evidence in a trial the authority can not deport a person in view of this Act.

3. In this particular case an affidavit-in-opposition has been filed on behalf of the State of Assam wherein in paragraph-3 it has been stated as follows:

3. That with regard to the statements made in paragraph-1 of the petition, the deponent denies the same and states that it is not a fact that the Petitioner was forcibly deported from Nagaon (India) by the Respondent-authorities. The fact remains that acting on a tip off the Petitioner was brought to the Nagaon Border Branch on 3.2.98 while he was found strolling in the Nagaon town. On interrogation the Petitioner had divulged that originally he hails from Bangladesh, being born and brought up at village Chengram, P.S.-Barlekha, District-Moulani Bazar, Bangladesh. In the year 1994, on 25th October, he procured a passport No. 0-822363 through illegal means and entered into India (Assam) under Murajhar police station of Nagaon district without reporting his arrival before the district authority. The Petitioner Md. Kamaluddin, son of late Modorisin Ali was deported to his own country on the same day via-Mahishesan PPCP Vide Exit No. 41/98 dated 3.2.98.

After such deportation he again entered India and filed this writ Application on 13.5.90. This proves the existence of a porous border and the plight of the country.

4. Shri Rahman, learned Advocate for the State of Assam has produced before me a passport issued by the Government of Pakistan in the name of the Petitioner and that passport shows that before arrival in India, the Petitioner was travelling from Karachi to Bangladesh. That passport was issued on 2.11.94 by the Government of Pakistan and thereafter he travelled from Karachi to Dacca by Pakistan International Flight on 7th of November/94 and the Boarding pass which was seized from the Petitioner at the time of his arrest has also been produced along with passengers ticket and baggage check. The Petitioner also collected

foreign exchange for travelling expenses and Visa also was obtained by him. From these documents it is crystal clear that the Petitioner is a foreign National and he had a passport. He came to India stealthily. So the claim that he is an Indian citizen is incorrect and he has been rightly arrested by the authority. So he can be deported by the authority.

5. The record produced by Shri Rahman shall be kept with the case record. Accordingly this writ application is absolutely devoid of any merit. Hence it is dismissed. Stay order, passed earlier, stands vacated. The Petitioner may be deported from India by the authority immediately. The petition also suffers from suppression of material facts.

6. Before parting with the record I only express my displeasure and annoyance with regard to the casual and cavalier manner in which voters' list is prepared/made in Assam. On the basis of such an incorrect Voters's list a person was allowed even to contest the Election. Send a copy of the judgment to the Deputy Commissioner, and the Superintendent of Police, Now gong to do the needful.