
(2008) 02 GAU CK 0054
In the Gauhati High Court

Karamat Ali

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

ILLEGAL MIGRANTS (DETERMINATION BY TRIBUNALS) ACT, 1983 — Section 3

Citation : (2008) 1 GLT 947

Hon'ble Judges : Smti. A. Hazarika, J;Aftab H. Saikia, J

Bench : Division Bench

Judgement

Aftab H. Saikia, J.—Heard Mr. R. Ali, learned Counsel for the appellant. Also heard Mr. P. Sendeka, learned State counsel representing the official respondents.

2. The legality and correctness of the order dated 8.8.05 passed by the learned Single Judge in WP(C) No. 5663/05 has been assailed in this writ appeal.

3. The order dated 8.8.05 under challenge may be quoted as under:

The challenge in the instant writ petition is against the order dated 20.6.2005 passed by the illegal Migrants Determination Tribunal, Barpeta in Case No. 2208/2003.

The Apex Court by order dated 12.7.2005 in Writ Petition (Civil) No. 131 of 2000 has declared the Constitution of the aforesaid Tribunals under the Act to be constitutionally invalid. In fact, the Act itself has been struck down. In the aforesaid order of the Apex Court the proceedings pending before the Appellate Forum have also been declared to have abated.

In such a situation, it will be difficult for this Court to entertain this writ petition. Dismissed.

4. Challenging the above quoted order, Mr. Ali, learned Counsel for the appellant submitted that the appellant was declared as an illegal migrant within the meaning of Section 3(1)(c) of the Illegal Migrants (Determination by Tribunal) Act, 1983 (for short, the IM(D)T Act), vide judgment and order dated 20.6.05

rendered by the Illegal Migrants (D) Tribunal, Barpeta (hereinafter referred to as the Tribunal) in Case No. 2208/03 (B))

5. It is pleaded that the said judgment and order was passed in absence of the appellant and he did not get the reasonable opportunity of filing of the written statement in the said case. Being aggrieved by the said order, the appellant moved this Court through a writ proceeding in WP(C) No. 5663/05 and this Court by the above quoted order dismissed the writ petition holding that since the constitution of the Tribunals under the IM(D)T Act was itself declared constitutionally invalid in terms of the Apex Court's order dated 12.7.2005 in Writ Petition (Civil) No. 131 of 2000, it would be difficult for the writ Court to entertain the writ petition as proceeding before the appellate Tribunal was also declared to have abated.

6. Referring to a judicial pronouncement of this Court passed by the learned Single Judge on 23.5.06 in WP(C) No. 5846/99 with analogous other writ petitions (Santi Ranjan Dey and Ors. v. State of Assam and Ors.) reported in 2006 (4) GLT 716, Mr. Ali has submitted that the learned Single Judge, in the above cited cases, by a common judgment and order, having considered the decision of the Apex Court in the case of Sarbananda Sonowal Vs. Union of India (UOI) and Another, remanded all such writ petitions pending before this Court for adjudication wherein almost in all the cases, there was an allegation of violation of principles of natural justice as alleged in the case in hand, to the respective Foreigners Tribunal for their disposal by fresh trial following the procedure under the law in force and also in terms of the Sarbananda Sonowal's case (supra) and accordingly, it is contended that this writ appeal may also be disposed of by passing similar order remanding the matter for its fresh adjudication by the concerned Foreigners Tribunal at Barpeta,

7. We have carefully considered the judgment and order passed on 23.5.06 by the learned Single Judge as cited above and also given our thoughtful consideration to the extensive arguments advanced in the instant case by the learned Counsel for the parties. Having closely scanned the facts and circumstances of the case in its entirety, we are of the considered opinion that the ends of justice would be satisfied if the appellant is directed to approach the concerned Foreigners Tribunal having the competent jurisdiction at Barpeta for redressal of his grievances by fresh trial following the procedure under the law in force and also in terms of the Sarbananda (supra) case. It is ordered accordingly.

8. The initial judgment and order dated 20.6.05 passed by the Tribunal and the order passed by the learned Single Judge dated 8.8.05 are hereby interfered with and those stand set aside.

9. The appellant so represented by his engaged learned Counsel is directed to appear before the Foreigners Tribunal at Barpeta within 26.3.08 and the said Foreigners Tribunal on his such appearance within the date indicated above, shall issue notice to all the interested parties including the Government officials and

thereafter, shall make an endeavour to decide the case of the appellant afresh in the manner prescribed in the Foreigners Act, 1946 and the Rules framed thereunder and the procedure prescribed under Foreigners (Tribunals) Order, 1964.

10. Till the final disposal of the case of the appellant by the Foreigners Tribunal as directed above, the appellant shall not be deported.

11. This disposes of this writ appeal.