
(2015) 07 GAU CK 0041
In the Gauhati High Court
Case No : WP(C) No. 1562 of 2013

Khalil Ali and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Foreigners Act, 1946 — Section 2(a), 9

Citation : (2015) 4 GLT 537

Hon'ble Judges : Biplab Kumar Sharma, J.

Bench : Single Bench

Advocate : N. Hoque, Advocate, for the Appellant; G. Sarma, C.G.C. and K.M. Talukdar, G.A., for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—This writ petition is directed against the judgment dated 8.2.2013 of the Foreigners Tribunal (1st), Morigaon passed in FT (C) Case No. 201/2007 (State of Assam Vs. Khalil Ali & Ors.). By the said judgment, the petitioners have been declared to be foreigners under Section 2(a) of the Foreigners Act, 1946. I have heard Mr. N. Hoque, learned counsel for the petitioners. Also heard Ms. K.M. Talukdar, learned State Counsel and so also Ms. G. Sarma, learned counsel appearing on behalf of Mr. S.C. Keyal, learned ASGI. I have also perused the entire materials on record including the records received from the Tribunal.

2. The reference against the petitioner was made on the basis of the report submitted suspecting them to be foreigners. Although as per the said reference and also recorded in the impugned order, apart from the two petitioners, the husband and wife, there were three other persons, namely, Md. Jahur Ali, Md. Furkan Ali and Md. Uluhia, all sons of the petitioner No. 1, but the petitioners have disowned them as their sons. However, as the records would reveal, on receipt of notice, the petitioners entered appearance on behalf of all. In the form

recording the information received the petitioners were said to be of Bangladesh in the district of Sylhet. Their three sons were described as minors.

3. On receipt of the notice, the petitioners filed their written statement on 11.11.2009, in which, they never stated that the proceedee No. 3, 4 and 5 were not their offspring. As per their written statement, the father of the petitioner No. 1 is late Jainal Abedin. It appears that against the word "father" initially the word "grand" was written and against the name "Late Jainal Abedin," initially some other's name was written. However, in both the words "grand" and "Jainal Abedin" whitener was used. In the said written statement, the petitioner No. 1 stated that he was known by another name, namely, Khali Ali and that his father Jainal Abedin was also known by another name. This aspect of the matter will have a relevance, about which discussions are made below.

4. In the writ petition, the petitioners have enclosed the voter lists of 1966 and 1970 containing the names of one Jainal Sheikh and Jainath Sheikh respectively. While in 1966 voter list, the father of Jainal Sheikh is Karjil, but in the 1970 voter list he is Fajil. In Annexure-C voter list, the name of Khalilur Rahman appears showing his father as Jainal. On the other hand, the Annexure-C series family identity card, the name of Khalil Ali appears showing his father as Jainal. The learned Tribunal discussing the evidence on record has found the following discrepancies.

"3. I have carefully perused the records and heard argument from both sides. As per Ext. "Ka", one Jainath Seikh, S/o. Karjel, aged 40 years was a voter in the year 1966. There are discrepancies in the name of the voter and his father for which this voter list cannot be accepted as related to the father of O.P. No. 1. As per records, the persons prosecuted are Md. Khalil Ali, S/o. Lt. Jainal Ali (O.P. No. 1) and O.P. No. 2, Musstt, Sahara Begum (wife of Khalil Ali). But as per Ext. "Ka", one, Jainath Seikh, S/o. Karjel was a voter and as per ext. (Kha", the voter list, 1970, on Jainal Seikh, S/o. Fazil was the voter against serial No. 376. Again as per Ext. "Gha" Khalilur Rahman, S/o. Jainal was the voter in the year 1985 under Jagiroad L.A.C. against serial No. 714, but in Ext. "Cha", the Special Family Identity Card No. 806573, the card holder was Khalil Ali, S/o. - Jainal. In the certificate (Ext. "Chha") issued by the Gaoburha of Uttarkhula Mauza, Mikirgaon Kisam, Musstt Sahara Khatun was married by Md. Khalil Rahman and in Ext. "Jha", the certificate issued by Govt. Gaonburha of Balaipathargaon, it is Khalilur Rahman, S/o. Lt. jainal Seikh. Again in Ext. "Niya", the voter list, 2010, the voters are Sahara Khatun, w/o. - Khalil Hoque and Khalil Hoque, S/o. Jainal Ali under Jagiroad LAC."

5. In the writ petition, the petitioner No. 1 has identified his father as Jainal Abedin, but in the written statement filed before the Tribunal no such plea was taken. As to what are the discrepancies found by the Tribunal and recorded in the impugned judgment has been noted above. The petitioners placed reliance on certain documents discussed in the impugned judgment, in which, the name of one Khalil Ali, son of Late Jainal Ali is recorded, but as per the Ext.-"Ka", one

Jainath Sheikh, son of Karjil was a voter and as per the Ext.-"Kha" (voter list of 1970), one Jainal Sheikh, son of Fazil was the voter. Again as per the Ext.-"Gha" Khalilur Rahman, son of Jainal was the voter in 1985.

6. As discussed in the impugned judgment, the petitioners placed reliance on the documents containing the name of Jailan; Jainal Sheikh, Jainal Ali, but on the other hand, no plea was taken in the written statement that all those names pertained to the same person, rather in the writ petition, the petitioner claims that his father's name is Jainal Abedin. Similarly, the petitioner No. 1 also placed reliance on certain documents showing his name as Khalilur Rahman, Khalil Ali and Khalil Hoque. Needless to say that mere filing of some documents and picking up any name from such document so as to establish relationship with the said person as father or mother or even grandfather and grandmother does not amount to its proof. In *L.I.C. of India and Another Vs. Ram Pal Singh Bisen*, , the Apex Court has held thus:

"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."

7. The discrepancy in the name of the petitioner No. 1 and his father in the documents filed by him cannot be taken as legal evidence to confer Indian citizenship. As recorded in the verification report, the petitioners illegally migrated to Indian from Village-Sibpur, P.S. Endor, Dist.-Sylhet, Bangladesh after 25.3.1971. The Tribunal having appreciated the evidence and there being no error of justice and/or it being not a case of no evidence at all and/or recording of any perverse finding, this Court exercising writ jurisdiction cannot sit on appeal over the findings recorded by the Tribunal vide the impugned judgment. In this connection the scope, ambit and jurisdiction of the Writ Court in such matter as discussed by the Full Bench of this Court *The State of Assam and Others Vs. Moslem Mondal and Others*, may be referred to.

"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 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 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. The question of citizenship cannot be taken lightly. A procedee cannot be allowed to project any name so as to claim the said name to be that of his father or mother. As per the requirement under Section 9 of the Foreigners Act, 1946 a procedee is bound to discharge the burden of proof strictly in accordance with law. Mere filing of some document without proving the contents thereof cannot

lead to the situation in which such burden of proof can be said to have been discharged. The necessity to discharge the burden of proof in strict compliance has been discussed by the Apex Court in Sarbananda Sonowal Vs. Union of India (UOI) and Another, .

9. In view of the above, the writ petition is dismissed upholding the impugned order of the learned Tribunal.

10. Registry may transmit the case records to the Tribunal.

11. The Superintendent of Police (B), Morigaon and the Deputy Commissioner, Morigaon are directed to take appropriate action in the matter towards deportation of the petitioner from India and deletion of her name from the voter lists. She shall be immediately taken into custody and kept in detention camp, if not already done.

12. Let copies of this judgment and order be furnished to the Superintendent of Police (B), Morigaon and the Deputy Commissioner, Morigaon. Another copy be sent to the Union of India in the Ministry of Home. An extra copy of this judgment and order may also be furnished to Mr. S.C. Keyal, learned ASGI for his necessary follow up action. List after one month for furnishing re-ports by the Superintendent of Police (B), Morigaon and the Deputy Commissioner, Morigaon.