
(2019) 03 GAU CK 0033
In the Gauhati High Court
Case No : Writ Petition (C) No. 1082 Of 2019

Lalmohan Das And 4 Ors

APPELLANT

Vs

Union Of India And 6 Ors

RESPONDENT

Date of Decision : 08-03-2019

Acts Referred:

Citation : (2019) 03 GAU CK 0033

Hon'ble Judges : Achintya Malla Bujor Barua, J;Ajit Borthakur, J

Bench : Division Bench

Advocate : D P Borah

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Mr. DP Borah, learned counsel for the petitioners, Mr. A Ali, learned counsel for the Election Commission of India, Mr. A. Kalita, learned standing counsel for the State of Assam appearing for the Foreigners Tribunal and Border Affairs as well as Ms. G Sarma, learned counsel for the authorities under the Union of India.

2. On being referred by the Superintendent of Police, (Border), Dibrugarh, Case No.DDT-40/1989 and 672/1988 were registered in the Illegal Migrants Determination Tribunal, Dibrugarh against the petitioners. The Tribunal by its order dated 17.07.1993 had declared the petitioners to be illegal migrants, who entered India after 25.03.1971. Against the order of the Tribunal, an appeal was preferred before the Illegal Migrants Determination by Tribunal, which was registered as Appeal Case No.63/1993. But upon the IMDT Act of 1983 being declared ultra-vires by the Supreme Court, the proceeding before the Appellate Tribunal was not continued any further. In a situation, it was construed that the order dated 17.07.1993 had attained its finality.

3. The petitioners prefer this writ petition in the circumstance that they were

unaware of the outcome before the Appellate Tribunal, but when the police has taken the petitioners in detention, the petitioners came forward to assail the order dated 17.07.1993. In the writ petition, the petitioner No.1 claims that his father Ankur Moni Das along with his wife Sunya Lata Das and his son Lalmohan Das, who is the present petitioner No.1 migrated from the erstwhile East Pakistan on or after 01.01.1964. To that extent, there exists a relief eligibility certificate issued by the Government of India, Ministry of Rehabilitation bearing CR No.5090 dated 13.08.1964. It is the stand of the petitioners that even upon exercising due diligence, the said relief eligibility certificate could not be produced before the IM(D) Tribunal and in fact, the petitioners had produced another document being a migration certificate issued by the Mahishashan Passport Checking Post dated 29.09.1956. The Tribunal because of some variance in the date of issue and the stamp contained in the certificate had rejected the same.

4. Without expressing any view on the merit of the rejection of the migration certificate dated 29.09.1956, we have also taken note of that the migration certificate contains a serial number with a date and a round seal, but the concerned officer had signed the certificate two days later i.e. on 01.10.21956. But be that as it may, the petitioners have produced a copy of the relief eligibility certificate bearing CR No.5090 dated 13.08.1964 issued by the Government of India in the Ministry of Rehabilitation. If the relief eligibility certificate issued by the Government of India, Ministry of Rehabilitation is an authentic document, the same itself gives an indication that the petitioner No.1 along with his father was present in India at least at the time when the certificate was issued.

5. In such view of the matter, we deem it appropriate that the claim of the petitioners require a further consideration by the Tribunal by taking into account the relief eligibility certificate dated 13.08.1964. For the purpose, the parties may produce the required materials before the Tribunal including calling of the records related to the relief eligibility certificate from the Government of India, Ministry of Rehabilitation and thereupon verify its authenticity and acceptability. Upon doing so, the Tribunal shall pass a reasoned order, which if goes in favour of the petitioners, shall prevail over the earlier order dated 17.07.1993 of the IM(D)T, Dibrugarh in Case Nos. DDT-40/1989 and 672/1988. In the event, the conclusion of the Tribunal goes against the petitioners, appropriate reasoned order be also passed.

6. It is stated that the petitioners are presently in detention at Jorhat Detention Camp. Although we are not interfering with the order of the Tribunal dated 17.07.1993 for the present, but considering the nature of the materials produced, we order that the petitioners be released from the detention camp at Jorhat subject to furnishing of two separate surety bonds (each of the petitioner) from two prominent persons of their village or a surety (each of the petitioner) from an appropriate Government official to the satisfaction of the Superintendent of Police (Border), Dibrugarh, who shall verify and satisfy itself as regards the

authenticity and acceptability of the sureties.

7. The petitioners shall appear before the Foreigners Tribunal, Dibrugarh on 04.04.2019 and upon appearance of the petitioners before the Tribunal, the Tribunal shall give its consideration as indicated above within a period of 60 days therefrom.

8. Send back the LCR immediately.

Writ petition stands allowed to the extent indicated above.