
(2009) 08 GAU CK 0090
In the Gauhati High Court
Case No : Writ Petition (C) No. 1334 of 2009

Mameza Khatun

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Foreigners Act, 1946 — Section 9

Citation : (2010) 1 GLD 580

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The petitioner who has been declared to be a foreigner (illegal Bangladeshi Migrant) by the Foreigners Tribunal, has filed this writ petition challenging the legality and validity of the order, so passed by the Tribunal. The impugned order is dated 4.3.2008 passed by the Foreigners Tribunal, Kamrup (Metro) in FT case No. FT Kamrup (M) 49/07.

2. The case of the petitioner is that her name is Mameza Khatun and the Tribunal by its impugned judgment and order, has declared one Mrs. Mumtaz Begum to be a foreigner (illegal Bangladeshi migrant). It is the case of the petitioner that although she is not involved in the said FT case. No. Kamrup (M) 49/07, corresponding to IMDT case No. 3031/04 and police case No. 852/2006, but she has been wrongly picked up branding her to be an illegal Bangladeshi migrant, entering Assam after 25.3.1971.

3. According to the petitioner, she is an Indian citizen, by birth, and her present age is about 38 years. She has stated that her name appeared in the voter list of 2005. As regards the proceeding before the Tribunal, the petitioner has stated that she had appeared before the Tribunal on 10.10.2007, showed certain documents to the Tribunal and verbally explained that the notice relating to Mrs. Mumtaz Begum did not pertain to her. According to her, she had verbally

explained before the Tribunal that her name being Mameza Khatun, she should be absolved from the proceeding. According to the petitioner, after such verbal submissions before the Tribunal, she did not appear any more to answer the proceeding. It was only in the month of March, 2009, she came to know that the proceeding has been answered against her and the police has issued the Quit India Notice. After obtaining the certified copy of the ex parte order dated 4.3.2008 passed by the Foreigners' Tribunal, Kamrup (Metro) in FT case No. 49/07, she has approached this Court.

4. I have heard Mr. M.H. Rajborbhuiya, learned Counsel for the petitioner as well as Ms. R. Chakraborty, learned Additional Senior Govt. Advocate. None appeared for Union of India. The whole basis of the claim of the petitioner is that the proceeding before the Tribunal being in respect of one Mrs. Mumtaz Begum, she could not have been implicated in the said proceeding. According to her, her name is Mameza Khatun. The petitioner has also placed reliance on the copy of the voter list of 2005 showing the name of one Mameza Khatun, which she claims to be her name. The petitioner has also placed reliance on photocopies of certain certificates which are readily available in Assam. No reliance can be placed on the said documents and it was incumbent on the part of the petitioner to discharge the burden of proof as envisaged u/s 9 of the Foreigner's Act 1946, which she failed to discharge.

5. According to the petitioner, it is a case of wrong identity. If the notice was issued in the name of Mrs. Mumtaz Begum, it is not understood as to why the petitioner had received the same. Her statement in the writ petition is that the police put pressure on her to accept the notice. Same is the statement relating to the Quit India Notice, which according to the petitioner, was served on her by the police forcibly.

6. I have considered the submissions made by the learned Counsels for the parties and the records of the Tribunal. The proceeding vide FT. Kamrup (M) case No. 49/07 was initiated by the Foreigners' Tribunal on receipt of the reference from the police. The order sheet reveals that on receipt of the notice, the petitioner appeared on 28.7.2007 and 10.10.2007. Thereafter, on the subsequent dates i.e. 2.1.2008, 28.2.2008 and so also on the date of passing of the impugned order dated 4.3.2008, the petitioner remained absent which naturally resulted in the ex parte order.

7. The notice from the Tribunal was in the name of Mrs. Mumtaz Begum, which was received by the daughter of the petitioner on 18.8.2007, as per the endorsement of the Process Server. As a token of the receipt of the notice, the said daughter, namely, Ashia Begum put her thumb impression describing her to be the daughter of Mrs. Mumtaz Begum. Although, it is the case of the petitioner that her name is Mameza Khatun, she responded to the proceeding in the name of Mrs. Mumtaz Begum. All the documents in the records of the Tribunal pertain to Mrs. Mumtaz Begum. Now, the petitioner claims that her name is Mameza Khatun. If her name is Mameza Khatun, it is not understood as to why she

responded to the proceeding and appeared before the Tribunal, although later on, she abandoned the proceeding. Nothing has been shown to prove that the name of the petitioner is Mameza Khatun and not Mrs. Mumtaz Begum. The statement that the police forcibly served the notice on her is not at all believable. Even if the notice was served forcibly, there was no necessity for her to appear before the Tribunal as the notice was not in her name.

8. Now, coming to the writ Court, the petitioner has taken a nice device to claim that her name is not Mrs. Mumtaz Begum but Mameza Khatun. However, nothing has been shown to establish the same. No explanation has been furnished as to why her daughter received the notice from the Tribunal in the name Mrs. Mumtaz Begum. The petitioner also in response to the said notice, appeared before the Tribunal on two occasions. If the petitioner is not Mrs. Mumtaz Begum but Mameza Khatun, she could have filed appropriate application before the Tribunal explaining the situation. Nothing of that sort was done by the petitioner and now coming to the writ Court has dumped certain documents, so as to contend that she is not Mrs. Mumtaz Begum but Mameza Khatun. Such story is unbelievable.

9. For all the aforesaid reasons, the writ petition is dismissed. The Superintendent of Police, Kamrup (Metro) Guwahati is directed to take the petitioner into custody and keep her under custody till such time, she is deported to Bangladesh. The Superintendent of Police in consultation with the Election Branch shall also ensure deletion of the name of the petitioner, if included in the voter list.

10. List on 14.9.2009 for reporting compliance by the Superintendent of Police, Kamrup (M).

11. Let copies of this judgment and order be sent to Union of India and the Superintendent of Police, Kamrup (M), Guwahati. Another copy be furnished to Ms. R. Chakraborty, learned Additional Senior Govt. Advocate for necessary follow-up action.

12. Let the LCR be sent down to the Tribunal alongwith a copy of this judgment and order.