

(2010) 01 GAU CK 0056
In the Gauhati High Court
Case No : Writ Petition (C) No. 4611 of 2007

Md. Abdul Khalique

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 08-01-2010

Acts Referred:

Constitution of India, 1950 — Article 19, 20, 21, 22
Foreigners Act, 1946 — Section 9

Citation : (2010) 1 GLD 872

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Judgement

B.K. Sharma, J.—The petitioner who has been declared to be a foreigner (illegal Bangladeshi migrant) has filed this writ petition assailing the legality and validity of such declaration. The impugned order is dated 9.4.2007 passed by the Foreigner Tribunal, No. II, Nagaon in FT case No. 292/2006.

2. I have heard Mr. I. Uddin, learned Counsel for the petitioner as well as Ms. R. Chokraborty, learned Addl. Sr. Govt. Advocate and Mr. P. Das, learned CGSC. I have also scrutinized the records received from the Tribunal.

3. The petitioner claims to be an Indian citizen by birth. According to him he was born and brought up at village Paghali under Rangagora Mouza, P.S. Shamaguri in the District of Nagaon. The petitioner has named his father as Md. Malem Uddin and grandfather was Abdul Wahab. According to the petitioner both of them were Indian citizens by birth.

4. The petitioner has annexed three documents (Annexure 1 series-typed copies only) which are the purported voter lists of 1995, 1970 and 1997 containing the names of Abdul Wahab, Malen Uddin and Abdul Khaleque respectively.

5. Above are the three documents on the basis of which the petitioner wants to establish his Indian citizenship by birth in this proceeding.

6. There is nothing to prove that Abdul Wahab is the grand father of the petitioner. Even if it is accepted that Abdul Wahab is his grand father and Malen Uddin is his father, there is no explanation as to why their names who were aged 60 years and 36 years in 1965 and 1970 were not included in any other voter list and/or documents. There is also no explanation as to why the name of the petitioner is not included in any voter list except 1997 although in 1997 he was 33 years of age. The typed copies of Annexure-1 series documents cannot be relied upon as a proof of Indian citizenship by birth and production of the said documents (only typed copies) cannot be said to be the discharge of burden of proof as envisaged u/s 9 of the Foreigners Act, 1946. Further, as has been held by the Apex Court in Bhanwaroo Khan and Others Vs. Union of India (UOI) and Others, long stay in the country and enrolment in the voter list would not confer any right on an alien to continue to stay in the country.

7. The records of the Tribunal have revealed that on receipt of the notice, the petitioner duly appeared before the Tribunal by filing written statement on 25.9.2006. In the written statement only mention was of purported inclusion of the name of his grand father Abdul Wahab in 1965 voter list and nothing else. There is no mention of the purported 1970 voter list containing the name of the father of the petitioner Md. Malem Uddin. In the written statement including verification, the petitioner did not name his father as Malem Uddin. There was also no mention that his said father was a voter in 1970.

8. Alongwith written statement the petitioner only annexed a photo copy of the voter list of 1965 (extract only) showing the name of one Abdul Wahab. It is only on the basis of such written statement and the said document of 1965, the petitioner wanted to establish his case claiming Indian citizenship by birth.

9. The Tribunal considering the evidence on record has passed the impugned order dated 9.4.2007 answering the reference in favour of the State. The petitioner asserts that he was born and brought up at the village Paghali, Mauza-Rangagora, P.S. Shamaguri in the District of Nagaon, but there is nothing on evidence to establish the same. Referring to the own evidence laid by the petitioner, the Tribunal has noticed that the said evidence does not establish that the petitioner was born and brought up at village Paghali. The DW 2 in his deposition stated that the grand father of the petitioner, namely Abdul Wahab was not known to him and also that he was not aware of the name of the petitioner's father. According to him (DW 2), the petitioner was known to him since 1990.

10. The Tribunal in its impugned order has recorded the findings that the petitioner ought to have adduced evidence regarding his plea of being born and brought up at village Paghali. The two DWs examined by the petitioner clearly stated that they came to know about the petitioner only around 1990. The Tribunal has rightly recorded the finding that although the 1965 voter list indicated one Abdul Wahab, but in absence of any evidence to show that said Abdul Wahab was the grand father of the petitioner, no reliance could be placed

on the said documents.

11. From all the above materials it is clearly established that the petitioner failed to discharge his burden of proof as envisaged u/s 9 of the Foreigners Act, 1946. If the name of the father of the petitioner is Malem Uddin, nothing prevented him from stating the same in the written statement, more particularly in the verification filed in support of the written statement. It was also not stated that the petitioner's father was a voter in the year 1970. As recorded above, only document produced by the petitioner was the photo copy of the voter list of 1965 containing the name of Abdul Wahab and nothing else.

12. DW 1 is the Government Gaoburha. He in his deposition made on 1.12.2006 stated that the petitioner had migrated to the village under his jurisdiction about 10/12 years back. As noted by the Tribunal, the said witness clearly stated that he did not know the name of the petitioner's grand father and also that he did not know as to who was About Wahab whom the petitioner claims to be his grand father. Likewise DW 3 also stated that the petitioner was known to him from 1990 and that he had migrated to the particular village about 14/15 years back.

13. The above evidence adduced by the petitioner cannot be said to be the discharge of the burden of proof as envisaged u/s 9 of the Foreigners Act, 1946. This being the position coupled with the fact that the writ Court cannot reappreciate and/or sit on appeal over the evidence and appreciation of the same done by the Tribunal, I see no reason to interfere with the impugned order. Consequently the writ petition is dismissed.

14. A foreigner is not entitled to any fundamental right guaranteed by Article 19 of the Constitution of India. In this connection I would like to refer to the following observations of the Apex Court in Anwar Vs. The State of J. and K.,

4. The petitioner is not a citizen of India. He is, therefore, a foreigner as defined in the Foreigners Act. Not being a citizen, he is clearly not entitled to any fundamental right guaranteed by Article 19 of the Constitution. He has thus no right to remain within the territories of India. His entry into this country was also without any right and indeed he himself does not claim to have entered into India in accordance with the provisions of the Foreigners Act and the orders made thereunder. The only rights which he can claim in the present proceedings are those contained in Articles 20 to 22.

15. In view of the dismissal of the writ petition, the Superintendent of Police (B), Nagaon shall now take the petitioner into custody, if not already taken, and shall detain him either in jail or in detention camp till such time he is deported/pushed back to Bangladesh. Further, the Deputy Commissioner, Nagaon shall also ensure deletion of the name of the petitioner from voter list, if any. Let the compliance report be furnished on or before 9.2.2010.

16. Registry shall furnish the copy of the judgment and order to the Union of India, the Superintendent of Police (B), Nagaon and Deputy Commissioner,

Nagaon. Another copy of the same shall also be furnished to Ms. R. Chokraborty, learned Addl. Sr. Govt. Advocate.

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