

(2012) 03 GAU CK 0021
In the Gauhati High Court
Case No : Writ Petition (C) No. 6167 of 2010

Md. Gul alias Gol Mahmmad

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Foreigners Act, 1946 — Section 9

Citation : AIR 2012 Guw 111

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : R. Sarma, N.K. Haloi and Ms. K.D. Sarma, for the Appellant; H.K. Barman, G.A. and M. Bhagwati, CGC., for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The petitioner who has been declared to be a foreigner (Bangladeshi national) who entered into Assam after the cut off date, i.e. 25.03.1971, has invoked the writ jurisdiction of this Court to get the said declaration set aside and quashed. The impugned declaration is vide judgment and order dated 01.07.2009 passed by the Foreigners Tribunal (1st) Morigaon in case No. FT(D) 337/2007 (State of Assam v. Gul Mohammad). The impugned order passed against the petitioner is an ex parte one as he did not respond to the proceeding before the Tribunal in spite of service of notice. I have heard Mr. R. Sarma, learned counsel for the petitioner as well as Mr. H.K. Barman, learned State counsel and Mr. M. Bhagawati, learned CGC. I have also perused the case records received from the Tribunal. Upon such consideration, my findings are as follows:

2. The records of the Tribunal have revealed that the notice of the reference was duly served on the petitioner. As recorded in the order dated 07.08.2007, the petitioner did not appear on the said date. However, the learned Tribunal granted another opportunity to the petitioner fixing the matter on 08.11.2007.

3. After the aforesaid initial date further dates were fixed including the dates on 08.11.2007, 18.02.2008, 22.05.2008, 31.08.2008, 16.10.2008, 12.01.2009, 21.04.2009 and 01.07.2009. In all these dates the petitioner remained absent in the Tribunal except on 16.10.2008 on which date he appeared and produced the school certificate which did not tally with the school certificate that was produced during the investigation.

4. Since the petitioner did not turn up before the Tribunal to oppose the reference and to place his case and failed to discharge his burden of proof as envisaged u/s 9 of the Foreigners Tribunal Act, 1946, the reference against him was concluded *ex parte* answering the reference in favour of the State and against the petitioner.

5. On verification of the records what is found is that there are two school certificates produced by the petitioner, one is a typed copy on a plain paper without any signature and the other one is a photo copy of the purported transfer certificate. On a bare perusal on both the certificates, it is found that they are not at all acceptable to be genuine documents. It is surprising that the typed one school certificate which does not bear any certificate of the issuing authority, has been attested by someone. It is not understood as to how the same could be attested. If the same is said to be the photo copy of the transfer certificate, then also both the certificates do not tally with each other. It is precisely the reason as to why the Tribunal in its order dated 16.10.2008 recorded its doubt about the veracity of the said two certificates.

6. Above apart, the petitioner never came forward to prove the said certificates as required under law. The direction of the Tribunal to produce the originals of the certificate was also not complied with by the petitioner. Merely filing or exhibiting a document in Court does not amount to prove its contents. Admission of documents in Court may amount to admission of its contents, but not their truth. Such documents not produced and marked cannot be relied upon. Contents of document cannot be proved by merely filing in a Court. Documentary evidence is required to be proved in accordance with the provisions of the Evidence Act which in the instant case the petitioner himself failed. In any case, the aforesaid school certificates cannot be said to be a proof of Indian citizenship of the petitioner by birth as has been claimed by the petitioner.

7. In the writ petition, the petitioner has referred to the photo copy of the voter list of 1965 (extract only) to contend that the name Jamila Khatun, wife of Lal Mahmmad appearing therein is his mother and her name appeared in the voter list of 1965. The petitioner has also annexed the photo copy of the school transfer certificate as was produced before the Tribunal which is not at all legible. Further plea of the petitioner in the writ petition is that his name was enrolled in 1989 and 1997 voter lists in support of which he has annexed Annexure-3 and Annexure-4 purported voter lists of the said years. On a bare perusal of the said two documents, it reveals that they are not voter lists, but only applications for incorporation of the names in the voter list. In the writ petition the emphatic

statement made by the petitioner is that his name was incorporated in the said electoral rolls and the said documents have been projected to be the electoral rolls. Thus there is misleading statement and suppression of actual fact.

8. Above are the documents on the basis of which the petitioner seeks to establish his Indian citizenship and that too, by birth. As regards ex parte hearing before the Tribunal, the petitioner has not furnished any plausible explanation. His only ground is that he being illiterate person, is ignorant about law. I am afraid such an explanation is not at all acceptable.

9. Learned Tribunal on perusal of the relevant materials including the verification reports relating to the case of the petitioner in which it was found that the petitioner is an illegal Bangladeshi migrant who entered into Assam after the cut off date, i.e. 25.03.1971, and on the basis of the testimony of P.W. 1 who proved the said verification reports, has rightly come to the conclusion that the petitioner is not an Indian citizen and illegally migrated to Assam after the said cut off date. The consequence thereof must follow. Invocation of the writ jurisdiction by the petitioner is an abuse of the process of law.

10. For all the aforesaid reasons. I do not find any merit in the writ petition and accordingly it is dismissed. The interim order stands vacated. There shall be no order as to costs.

11. The Superintendent of Police (B), Morigaon is directed to take consequence action towards deportation of the petitioner from India. The Deputy Commissioner. Morigaon is also directed to delete the name of the petitioner from the voter list, if found to have been included. Both the authorities are directed to furnish compliance reports to this Court within 31st March, 2012 on which date the matter shall be listed again for perusal of the said reports. Let the copies of this judgment and order be forwarded to the Superintendent of Police (B), Morigaon and the Deputy Commissioner. Morigaon. Another copy be sent to the Union of India, Home Department, New Delhi. Let a copy of this judgment be also furnished to Mr. H.K. Barman, learned State counsel for his necessary follow up action. Registry may send down the case records to the Tribunal along with a copy of this judgment.