

(2009) 08 GAU CK 0072
In the Gauhati High Court
Case No : Writ Petition (C) No. 5560 of 2008

Md. Jalal Uddin

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Citation : (2010) 1 GLR 1

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : M.H. Choudhury, for the Appellant; R. Chakraborty and N. Hawelia, for the Respondent

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 invoked the writ jurisdiction of this Court, assailing the legality and validity of the said order.

2. The petitioner who is stated to be 46 years of age (but in affidavit declared age is 66 years) and son of Md. Sabed Ali, has been declared to be a foreigner (illegal Bangladeshi migrant) by the Foreigners Tribunal, North Lakhimpur in FT Case No. 101/2007, vide order dated 28.11.2007. The order is ex parte as the petitioner, in spite of receipt of notice did not respond to the proceeding before the Tribunal. But in the writ petition, the stand of the petitioner is that he did not know anything about the proceeding before the Tribunal and that he did not receive any notice. According to him, he came to know about the proceeding only in the month of November, 2008 when the Police visited his house. Thereafter he obtained the certified copy of the order dated 23.11.2007, passed by the Foreigners Tribunal and filed the writ petition.

3. On perusal of the records of the Tribunal, when it came to the notice of this Court that notice, in fact, was served on the petitioner on 15.9.2007 and the petitioner in spite of receipt of notice, remained absent before the Tribunal. This

Court by order dated 28.1.2009 when pointed out the same, the Learned Counsel for the petitioner prayed for time to obtain instruction.

4. After the aforesaid order dated 28.1.2009, the matter was listed on several occasions but the Learned Counsel for the petitioner did not have any instruction in respect of the false statement made in the writ petition that no notice was served on the petitioner and that he was unaware of the proceeding before the Tribunal and thus could not make any submission as to how the petitioner would defend such a statement.

5. There being total suppression of material fact on the part of the petitioner in approaching the writ court, on this ground alone, the writ petition is liable to be dismissed. The petitioner who has been declared to be illegal Bangladeshi Migrant cannot have the luxury of delaying the proceeding before the Tribunal for long 20(twenty) years (1989-07) and thereafter to invoke the writ jurisdiction with material suppression of facts.

6. I have heard Mr. M.H. Choudhury, Learned Counsel for the petitioner as well as Ms. R. Chakraborty, learned senior Government Advocate and so also Ms. N. Hawellia, learned CGSC. I have also gone through the records of the Foreigners Tribunal from which it appears that the particular reference against the petitioner was made by the Police way back in 1987, on the basis of the report that the petitioner is an illegal migrant from Bangladesh. The order sheet of the Foreigners Tribunal reveals that, although, the petitioner duly received notice, the petitioner all along remained absent on all the dates starting from 18.1.1996 to 10.6.2005, during which period, as many as, 47 dates were fixed. The irony is that the Tribunal merrily kept on adjourning the matter only recording that "Party is absent", instead of deciding the matter ex parte.

7. After scrapping of the IMDT Act by the apex court, the matter was again taken up on 3.4.2007. Notice was duly served on the petitioner but he remained absent before the Tribunal on 18.8.2007, 17.9.2007, 26.11.2007 and eventually the Tribunal had no other option than to pass the ex parte impugned order on 23.11.2007. As per the provisions of the Foreigners Act, 1946, the burden is on the alleged foreigner to establish that he is not so, but an Indian citizen. The petitioner having failed to discharge the said burden, the Tribunal has rightly passed the order dated 23.11.2007.

8. The petitioner, who in spite of receipt of notice, did not appear before the IMDT and the Foreigners Tribunal could immediately approach the writ court by making false statement that he did not know about the proceeding before the Tribunal. In the writ petition, he has not even obliquely stated about the proceeding before the IMDT. As noted above, in the affidavit he has declared his age as 66 years but in paragraph 2 of the writ petition, he has declared his age as 46 years. While his name is Md. Jalal Uddin but in the affidavit, he has declared his name as Shri Talal Uddin. However, by filing MC No. 714/2009, such contradictions have been tried to be explained as Typographical error. The MC

has been filed not by the petitioner not on his own accord but has been filed when the court pointed out the contradictions. Thus, it is a matter of convenience for the petitioner to urge all sorts of grounds. It is a case in which the petitioner, although, was suspected to be a foreigner way back in 1987, but he is still staying in Assam and the authorities are silent spectators.

9. In the writ petition, the petitioner has annexed the copy of the voter list of 1997 purportedly containing his name. He has also annexed the copy of the order dated 31.3.1987 passed by the Foreigners Tribunal, North Lakhimpur, in FT Case No. 14/87, declaring the person concerned, not to be a foreigner. The petitioner has alleged that the said person concerned is his sister. Firstly, there is no material to show that the said person is his sister and secondly, even if she is his sister, that by itself will not mean that the petitioner is also an Indian citizen. It is the common experience that the illegal Bangladeshi nationals are maintaining their families at both ends. Some of the members live in Bangladesh while some of the members migrate to Assam. In such a situation and more so, when the petitioner failed to discharge his burden as envisaged u/s 9 of the Foreigners Act, 1946, the petitioner is not entitled to any relief in writ jurisdiction.

10. If the petitioner is really an Indian citizen and his age about 46 years and/or 66 years, it is not understood as to why his name is not there in any of the voter list except 1997 voter list, even if the particular name in the said voter list (extract only) is held to be pertaining to the petitioner. Further mere inclusion of the name in the voter list that too of 1997 does not mean that the person concerned is an Indian citizen. Going by the scenario in Assam, anybody can enter his name in the voter list the experience of this Court that even after declaring a Bangladeshi national to be within the stream of 1966 to 25.3.1971, requiring his name to be registered with the Registering Authority and deletion of his name from the voter list with resultant deprivation of right to vote for 10(ten) years, such persons continue to be voter and the authority do not take any follow up action to delete their names from the voter list, in terms of the order of the Tribunal.

11. There is another aspect of the matter. The experience of this Court dealing with such cases is that neither the State Government nor the Central Government, is at all, serious in detection and deportation of Bangladeshi nationals. Even after declaration is made holding the person to be an illegal Bangladeshi migrant, no action is taken to keep him in detention and deletion of his name from the voter list. If this is how such a huge problem is sought to be tackled, days are not far off when the indigenous people of Assam will be reduced to minority.

12. For all the aforesaid reasons, the writ petition is dismissed. The Superintendent of Police, North Lakhimpur, is directed to take the petitioner into custody and keep him under custody till such time, he is deported to Bangladesh. The Superintendent of Police in consultation with the jurisdictional Election Office shall also ensure deletion of the name of the petitioner, if included in any voter

list.

13. List on 15.9.2009 for furnishing compliance report by the Superintendent of Police, North Lakhimpur.

14. Let copies of this judgment and order be sent to Union of India and the Superintendent of Police, North Lakhimpur immediately and another copy be furnished to Ms. R. Chakraborty, learned Additional Senior Government Advocate for necessary follow up action.

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