
(2009) 08 GAU CK 0038
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 464 of 2009

Md. Samsul Haqu and Others

APPELLANT

Vs

Member, Foreigner's Tribunal and Others

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Citizenship Act, 1955 — Section 17, 6A, 6A(3), 6A(4), 6A(5)
Citizenship Rules, 2009 — Rule 16F

Citation : (2010) 1 GLD 214

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.

Facts

1. The petitioners who was declared foreigners by the Foreigners' Tribunal, Nagaon way back in 2002 (7.6.2002) have filed this writ petition in February, 2009, i.e. after 7 years without explaining the delay and with material suppression of facts as will be revealed a little later. For any Indian citizen fighting a litigation, the law relating to limitation, the principle that one should come to the Court with clean hands etc. are applicable. But the petitioner, already declared as a Bangladeshi national illegally staying in India, feels it to be his right to invoke the writ Court's jurisdiction at any point of time and that too with material suppression of fact. There is absolutely no explanation as to the cause of delay in approaching the writ Court in February, 2009 against the order passed by the Foreigners' Tribunal seven years back. It is a matter of grave concern that in spite of the time gap of seven years, the authorities vested with power and jurisdiction have not deported the petitioners to Bangladesh, rather it is on record that during this span of seven years their names have been incorporated in the voter list on the strength of which they must have cast their votes to determine the destiny of the country.

2. As per the averments made in the writ petition, the petitioners were illegally implicated in the proceeding under the provisions of the Foreigners' Tribunal Order 1964 branding them to be illegal migrants entering into Assam during the period from 1.1.1966-25.3.1971. As regards the proceeding before the Tribunal the simple statement made in paragraph 2 is that the petitioners did not appear before the Tribunal and thus the case was ordered ex parte against the petitioners. The direction of the Tribunal was for registering the names of the petitioners with registering authority as a consequence of which the petitioners would be disentitled to cast their votes in the elections and their names would stand deleted from the voter lists for a period of ten years by operation of Section 6A of the Citizenship Act, specially applicable in the State of Assam.

3. The petitioners have stated that the petitioners No. 2 to 5 are the wife, daughter and sons respectively of Md. Sirajul Haque, and the petitioner No. 1 is the elder brother of Sirajul Haque. Their case is that the name of the petitioner No. 1 appeared in the voter list of 1966 and that the name of Md. Sirajul Haque appeared in the voter list 1997. The petitioners have also annexed a copy of the voter list of 2005 so as to contend that their names were included in the said voter list. When Annexure-3 voter list of 2005 does not disclose any one of the names of the petitioners, Annexure-4 voter list of 2004 shows the name of one Md. Ainuddin who is stated to be the petitioner No. 5. However, the names of other petitioners do not appear in the said list. Annexure-5 is another voter list of 2005 containing the names of:

- (1) Sirajul Haque;
- (2) Fatima Begum;
- (3) Nooruddin;
- (4) Aimuddin;
- (5) Baharuddin;
- (6) Jamiluddin.

4. On the other hand, the names of the petitioners as indicated in the writ petition are as follows:

- (1) Md. Samsul Haque;
- (2) Fatima Bibi;
- (3) Nooruddin;
- (4) Alibur Nessa;
- (5) Ainul Haque @ Ainuddin.

5. Thus except the names of the petitioners No. 3 and 5, none other names in the said voter lists are that of the petitioners. Further, once the petitioners were

declared to be foreigners within the stream of 1.1.1966 -25.3.1971, such inclusion of the names of the petitioner in the voter list of 2005 is not permissible in law (Refer Section 6A of the Citizenship Act).

6. It is on the above basis the petitioners who have been declared to be foreigners within the stream of 1.1.1966-25.3.1971, have claimed their Indian citizenship by birth.

7. I have heard Mr. B.D. Cingh, learned Counsel for the petitioners as well as Ms. Nitu Howelia, CGSC. I have also heard Ms. R. Chokraborty, learned Addl. Sr. Government Advocate. I have also gone through the records of the Tribunal in FT Case No. 4856/88 which has given rise to this writ proceeding.

8. On perusal of the records, it appears that the proceeding against the petitioners was initiated way back in 1988 vide FT Case No. 4856/88. The order sheets have revealed that ever since the case was registered against the petitioners, it became a story of adjournments and the petitioner merrily remained absent in spite of receipt of notice. Initially they had appeared before the Tribunal, but later on abandoned the proceeding. Thus, naturally the Tribunal had no option than to pass the impugned ex parte order dated 7.8.2002. The Tribunal held the petitioners to be illegal migrants from the then East Pakistan entering into Assam during the period from 1.1.1966- 25.3.1971. Accordingly by the impugned order direction was issued to the petitioners to get their names registered in accordance with the provisions of the Foreigners Act, 1946 and Citizenship Act, 1955 within two months from the date of receipt of the order. The petitioner instead of carrying out the order so passed by the Tribunal are merely roaming around in Assam without registering their names with the registering authority, rather incorporated their names (some) in the voter list published thereafter. The authority at the helm of affairs did not take action to delete their names from the voter list, rather became party in their efforts to get their names incorporated in the voter list.

Suppression of Facts

9. As noted above, the petitioners have filed this writ petition with material suppression of fact, apart from there being gross delay and laches in approaching the Court without any explanation whatsoever. The petitioners had filed an application on 21.4.2003 before the Tribunal praying for vacating the ex parte order dated 7.6.2002. The said application was registered and numbered as Misc. Case No. 10/3. The matter was taken up by the Tribunal on 21.5.2003 by way of issuance of notice fixing the matter on 30.5.2003. On 30.5.2003 the petitioners appeared by filing Hazira. But on all subsequent dates, i.e. 30.6.2003, 29.7.2003, 6.9.2003, 1.10.2003, 3.11.2003 and 11.12.2003 they remained absent and did not press the application for vacating the ex parte order dated 7.6.2002 impugned in this proceeding. The fact of filing the Misc. Case No. 10/03 and the final order passed on 11.12.2003 in the said application has not even obliquely been stated by the petitioners. Thus, naturally the order dated

11.12.2003 is also not challenged. By the said order the learned Tribunal had confirmed the ex parte order dated 7.6.2002. In paragraph 5 of the writ petition, the petitioner while stating about the ex parte impugned order passed by the Foreigners Tribunal has also stated that "the petitioners were not aware of the order" which is out and out a false statement.

10. In view of the above, on both counts, i.e. the unexplained delay and laches (7 years) and suppression of material fact, the writ petition is liable to be dismissed and the petitioners are not entitled to any relief from writ Court. As observed above, for any Indian citizen litigant the principle that a litigant would be disentitled to any relief, if approaches the Court with material suppression of fact and other inordinate and unexplained delay, would apply with all its vigour, but the petitioners who are illegal migrants from the then East Pakistan are merrily roaming around in Assam with voting rights, the things are otherwise. Such foreigners can come to the Court and file writ petitions one after another at any point of time and that too with material suppression of facts, perhaps with the fixed notion that in this country there is no dearth of helping hands to protect the interest of such foreign nationals for their own narrow interest.

11. Section 6A of the Citizenship Act, 1955 is the special provision regarding citizenship of persons covered by Assam Accord. This provision is applicable only in the State of Assam. Section 6A(3)(a) of the Act provides that all persons of Indian origin who came to Assam during the period from 1.1.1966-25.3.1971 and who has been detected to be a foreigner, shall register himself with the registering authority. Upon such registration, his name shall stand deleted from the electoral rolls. Sub-section (4) of Section 6A provides that a person registered under Sub-section (3) shall have, as from the date on which he has been detected to be a foreigner and till the expiry of a period of ten years from that date, the same rights and obligation as a citizen of India, but shall not be entitled to have his name included in any electoral roll for any Assembly or Parliamentary constituency at any time before the expiry of the said period of ten years. Sub-section (5) of Section 6A provides that a person registered under Sub-section (3) shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner.

12. Rule 16-F of the Citizenship Rules, 1956 provides that an application for registration under Sub-section (3) of Section 6A of the Act shall be filed in the particular format by the person with the registering authority for the district in which he is ordinarily resident within thirty days from the date of his detection as a foreigner. Further requirement of the rule is that one copy of every application received during a quarter shall be sent by the registering authority to the Central Government and the State Government of Assam alongwith a quarterly return in the particular format. Sub-rule (5) provides that the period of 30 days may be extended not exceeding 60 days by the registering authority for reasons to be recorded in writing. There is no provision for extension of time limit fixed under

Rule 16(F) which is one month extendable for a further period of 60 days. The petitioners were declared to be foreigners within the stream 1.1.1966-25.3.1971 by the Foreigners Tribunal vide its order dated 7.6.2002. By now more than seven years have passed since then. In between instead of deletion of their names from the voter list, their names (some) were included in the voter list prepared subsequent to the order passed by the Tribunal. Thus, the order passed by the Tribunal way back in 2002 (7.6.2002) did not have any effect and impact on the petitioners for all these years. They could have avoided filing the writ petition after the order of the Tribunal and remained in Assam as Indian citizen casting their votes in violation of the provisions of the aforesaid Act and the Rules, but for the quit India notice served on them.

13. In the Citizenship Act, 1955 there is provision for renunciation of citizenship, termination of citizenship, deprivation of citizenship etc. Section 17 of the Act dealing with the offences, provides that any persons who, for the purpose of procuring anything to be done or not to be done under this Act, knowingly makes any representation which is false in a material particular shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to 50,000/- or with both.

14. This is only one instance of avoidance of the orders of the Tribunal and flouting the provisions of the Citizenship Act and the Rules framed thereunder. The petitioners who were to register their names with the registering authority within the aforementioned stipulated period, merrily avoided the same and rather incorporated their names in the voter list published thereafter. They must have cast their votes on that basis for different Parliamentary and Legislative Assembly elections and contributed in electing the peoples representatives.

15. In paragraph 5 of the writ petition a statement has been made that all of a sudden the petitioners were served with quit India notice. However, as to when such notice was issued and served, has not been disclosed. The petitioners have flouted the order of the Tribunal and the quit India notice. The period of limitation prescribed for registering the names with the registering authority has long expired and in view of the facts and circumstances discussed above, the petitioners cannot claim any leniency. The irony of the fact is that the petitioners have stayed in Assam although they are foreigners as has been declared by the Foreigners Tribunal. Although Section 6A of the Act permits them to get their names registered with the registering authority with the consequence of deletion of their names from the voter list, they all along avoided such a consequence and now have approached this Court after long seven years and that too with material suppression of fact. Merely because the petitioners are foreign nationals and the respective Governments, i.e. Central and State, are not keen to detect and report them, they cannot expect the same approach from the writ Court.

16. For the aforesaid reasons, the writ petition is dismissed upholding the impugned order of the Tribunal. The petitioners having not registered their names with the registering authority within the stipulated period, and rather

flouted the same and having approached this Court with material suppression of facts, should be taken into custody immediately. The Superintendent of Police, Nagaon shall ensure their immediate custody and deletion of their names from the voter list. In this connection, the concerned authority in the election department shall promptly act. The authority shall decide as to whether they should be deported to Bangladesh or should be given another chance to register their names with the registering authority with the consequence thereof such as deletion of their names from the voter list for a period of 10 years as envisaged in Sub-section (4) of Section 6A of the Act. The authority shall also decide as to whether proceeding should be launched against the petitioners for violating the provisions of the Act and the Rules framed thereunder.

17. The writ petition is dismissed. The Superintendent of Police, Nagaon shall furnish compliance report as per the above direction. List the matter on 14.9.2009 for furnishing compliance report by the Superintendent of Police, Nagaon. Let a copy of this judgment and order be furnished to Ms. R. Chokrabarty, learned Addl. Sr. Govt. Advocate for her appraisal of the Superintendent of Police, Nagaon. In addition, Registry shall also forward copies of this judgment and order to the Union of India and the Superintendent of Police, Nagaon forthwith.

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