
(2009) 08 GAU CK 0021
In the Gauhati High Court
Case No : Writ Petition (C) No. 1708 of 2008

Md. Samsul Hoque

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Foreigners Act, 1946 — Section 9

Citation : (2009) 1 GLD 485 Supp : (2010) 2 GLT 233

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Judgement

B.K. Sharma, J.—The petitioner who has been declared to be a foreigner (illegal Bangladeshi migrant) entering into Assam after 25.3.1971 has filed this writ petition praying for setting aside and quashing the order of the Tribunal.

2. The petitioner claims to be an Indian citizen by birth. He was involved in FT Case No. 200/06 (B) before the Foreigners Tribunal No. 1, Barpeta. The said case has been decided ex parte against the petitioner by the impugned judgment and order dated 27.12.2007". The decision is ex parte as the petitioner after initial appearance failed to appear and discharge his burden of proof to establish the Indian citizenship by birth as envisaged u/s 9 of the Foreigners Act, 1946. The Tribunal on the basis of the materials on record has answered the reference against the petitioner and in favour of the State.

3. The petitioner has tried to explain the circumstances leading to the impugned ex parte judgment and order in paragraphs 9 and 10 of the writ petition. The explanation is that on receipt of the notice from the Tribunal, he regularly appeared before the Tribunal till 19.12.2007 and on that date he was informed that the next date of the case was 13.2.2008 for submission of written statement. However, he received the copy of the impugned ex parte order dated 27.12.2007 on 5.2.2008 passed by the Foreigners Tribunal in FT case No. 200/06 (B). It is the case of the petitioner that the case could not have been decided ex parte as he had all along appeared before the Tribunal and the last date for

submission of written statement was fixed on 13.2.2008. It is the further case of the petitioner that on enquiry in the office of the Tribunal he came to know that there is another case pending in the Tribunal which is FT case No. 203/06 against another Samsul Haque, S/o Abdul Mia. As stated above, the petitioner was involved in FT case No. 200/06 and the name of the father of the petitioner is Faizuddin.

4. According to the petitioner, the Hazira filed by him was wrongly put in FT Case No. 203/06 instead of FT Case No. 200/06. Further case of the petitioner is that other FT Case No. 203/06 is of Samsul Haque, S/o Abdul Mia. Thus according to the petitioner his Hazira having been placed in FT Case No. 203/06, there is no illegal non-appearance of the petitioner in FT Case No. 200/06 was recorded which resulted in the impugned ex parte order. It is contended by the petitioner that such mistake has occurred due to identical name of the two persons involved in the aforesaid FT cases.

5. I have heard Mr. I. Uddin, learned Counsel for the petitioner as well as Ms. R. Chokraborty, learned Addl. Sr. Govt. Advocate. None appears for the Union of India. I have also verified the records of the FT Case No. 200/06 and FT Case No. 203/06. During the course of hearing, Mr. I. Uddin, learned Counsel for the petitioner not only referred to the documents annexed to the writ petition but also produced the certified documents in a sealed cover so as to claim that the petitioner is an Indian citizenship. Before going into that aspect of the matter this Court is required to answer as to whether the plea of the petitioner that the impugned ex parte order is the result of the mistaken identity of the Hazira filed by the petitioner. According to the petitioner he kept on filing Hazira upto 19.12.2007.

6. On verification of the case records of FT Case No. 200/06 what has transpired is that the earlier the case against the petitioner was registered under IMDT Act as IMDT Case No. 67/03. On the first date, i.e. on 2.6.2003, the petitioner appeared before the Tribunal and prayed for another date for filing written statement which accordingly was granted fixing the matter on 26.6.2003. On the said date and all other subsequent dates thereafter the petitioner remained absent in the proceeding before the Tribunal which was upto 3.6.2005. In between as many as 22 dates were fixed.

7. After such absence of the petitioner before the Tribunal the case was re-registered as FT case No. 200/06 pursuant to the scrapping of the IMDT Act by the Apex Court. Fresh notice was issued to the petitioner on receipt of which the petitioner appeared before the Tribunal on 22.6.2007 and filed the petition praying for another date to file written statement and documents. The prayer was allowed fixing the next dates as 7.8.2007. On 7.8.2007 the petitioner did not appear before the Tribunal and thereafter also on all subsequent dates which are 21.9.2007, 7.11.2007, 3.12.2007, 12.12.2007 and 27.12.2007 on which dates the impugned ex parte order was passed by the Tribunal.

8. From the aforesaid dates, what is seen is that the plea of the petitioner that he kept on appearing before the Tribunal till 19.12.2007 is a false statement inasmuch as 19.12.2007 is not the date fixed in the proceeding before the Tribunal in FT Case No. 200/06.

9. I have also verified the case records of FT Case No. 203/06 in which case the suspected foreigner had responded to the proceeding initially, but later on abandoned the proceeding. The case was registered under Foreigners Act, 1946 as FT case No. 203/06 after scrapping of the IMDT Act by the Apex Court. Notice was issued to the suspected foreigner once again. Be it stated here that said proceeding was earlier registered as IMDT Case No. 104/03. In the said proceeding before the Foreigner Tribunal, the suspected foreigner remained absent on 18.1.2007, 22.2.2007, 22.3.2007, 4.6.2007, 18.7.2007, 7.8.2007 and 21.9.2007. However, on 7.11.2007 the petitioner in that case appeared and filed a petition praying for vacating the earlier order passed on 18.7.2007 for ex parte proceeding. The prayer of the petitioner was allowed fixing the next date on 19.12.2007. On 19.12.2007, the petitioner in that case appeared by filing a petition and prayed for another date to submit written statement and documents. Such prayer was allowed fixing the matter on 13.2.2008. Thereafter, further dates fixed were 3.4.2008, 24.4.2008 and 27.6.2008. In the meantime, the records of the case having been called for by this Court, same was sent vide order dated 3.9.2008.

10. From the above narration of the facts, the plea of the petitioner that he kept on appearing before the Tribunal in the proceeding pertaining to FT Case No. 200/06 upto 19.12.2007 is absolutely a false statement. As discussed above, 19.12.2007 was not the date fixed in the proceeding in FT Case No. 200/06. The dates have been mentioned above. It was in FT case No. 203/06, 19.12.2007 was a date on which date the petitioner in that case prayed for time to file written statement. The records of the FT Case No. 203/06 further reveals that it was on 3.4.2008 the petitioner in that case filed a petition for vacating the order for ex parte hearing. The particular application dated 19.12.2007 praying for time to file written statement was filed by putting RTI of the suspected foreigner, but in the application dated 3.4.2008 same was signed by the suspected foreigner. I have verified all other documents including the appearance sheets. Upon verification, it appears that the petitioner in FT Case No. 203/06 while filing petitions, appearance etc. signed the same under clear handwriting, but the petitioner in FT Case No. 200/06, i.e. the petitioner in this proceeding, submitted petitions, appearance etc. not putting any signature, but by putting thumb impression. The particular petition dated 19.12.2007 also bears the RTI, which means the same was filed by the petitioner in FT Case No. 203/06. It is not known as to what was the occasion for him to file the petition on 19.12.2006 in FT Case No. 203/06 after avoiding the proceeding in FT Case No. 200/06 pertaining to him.

11. Aforesaid conduct on the part of the petitioner, although does not deserve

any leniency and also does not inspire the confidence of this Court that because of mistaken identity the petitioner remained absent before the proceeding in FT Case No. 200/06, but considering the matter in its entirety, I am of the considered opinion that ends of justice would be met if another opportunity is given to the petitioner to establish his Indian citizenship by discharging his burden u/s 9 of the Foreigners Act, 1946.

12. The instant proceeding is kept pending. The petitioner shall appear before the Tribunal on or before 7.9.2009 by filing written statement and documents. Upon such appearance, the Tribunal will proceed with the matter in accordance with law and decide the proceeding afresh as expeditiously as possible. The petitioner shall not delay the proceeding as was done on the earlier occasion by taking adjournment after adjournment and also by remaining absent from the Tribunal. In case of non-appearance and willful avoidance of the proceeding by the petitioner, the Tribunal will be at liberty to pass ex parte order against the petitioner. The Tribunal after deciding the reference shall furnish the order to this Court as expeditiously as possible, preferably within two months from the aforesaid date fixed.

13. List the matter after two months for furnishing report by the Tribunal. Let the case records of FT Case No. 203/06 and FT Case No. 200/06 be sent down to the Foreigners Tribunal, Barpeta immediately alongwith the copy of this judgment and order enabling the said Tribunal to conclude the proceedings pertaining to both the cases and furnish to this Court pertaining to FT Case No. 200/06.

14. Registry shall send the copies of this judgment and order to the Union of India and the Superintendent of Police (B) Barpeta immediately. Another copy of the said judgment be furnished to Ms. R. Chokraborty, learned Addl. Sr. Govt. Advocate for necessary follow up action.