
(1993) 03 GAU CK 0024
In the Gauhati High Court
Case No : Criminal Revision No. 53 of 1989

Md. Sibar Uddin and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-03-1993

Acts Referred:

Citizenship Act, 1955 — Section 6A

Foreigners Act, 1946 — Section 8

Illegal Migrants (Determination by Tribunals) Act, 1983 — Section 2, 8

Citation : AIR 1995 Guw 44

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : A.M. Mazumdar and M.A. Sheikh, for the Appellant;

Final Decision : Allowed

Judgement

S.N. Phukan, J.—The present petition u/s 115 read with Section 151, C.P.C. is directed against the order dated 22-12-1988 passed by the learned Asstt. District Judge, Barpeta in Misc. Appeal No. 14/88. By the said order, the learned lower appellate court affirmed the order of the learned Munsiff No. 1, Barpeta passed in Title Suit No. 53/88.

2. The suit was laid by 4 plaintiffs praying for a decree for declaration that they are citizens of India and also for a permanent injunction restraining the defendants from deporting them from India. In the plaint it has been urged that plaintiff No. 1 came to Assam from erstwhile East Pakistan with his father before 1940 and settled in village Uttar Mainabari, Police Station Bagbor, District Barpeta, Plaintiffs Nos. 2, 3 and 4 are sons and daughters of plaintiff No. 1. They were arrested for deporting on 11-2-1979 but somehow they could not be sent back to Bangladesh and thereafter they returned and filed the present suit. By order dated 28-5-88, it was recorded by learned trial court that in the year 1978 plaintiffs were deported from India and they returned from Bangladesh boundary. According to learned trial court, in view of Sections 23 and 24 of the Illegal

Migrants (Determination by Tribunals) Act, 1983 reading with Section 9, C.P.C. this suit is barred. The plaintiffs were directed to lay their suit before the Tribunal constituted under the above Act.

3. The learned lower appellate court after stating the facts and the various decisions affirmed the order of the learned trial court. I quote below the last sentence of the order of the learned lower appellate court:--

"As observed by the learned Munsiff No. 1 this is not a case to be referred to Tribunal set up under I.M.D.T. Act, 1983".

I may only refer that this observation is contrary to the decision of the learned Munsiff.

4. Heard Mr. M.A. Sheikh, learned counsel for the petitioner.

5. After agitation in Assam on the issue of foreign National, Parliament enacted the above Act namely, Illegal Migrants (Determination by Tribunals) Act, 1983, for short Act and consequently also amended the Citizenship Act, 1955 by introducing a new Section viz Section 6A. It is not necessary to quote the relevant Section of the Act. I may only state that reading Section 6A and definition of "Illegal Migrant" as contained in Section 2(C) and Section 8 of the Act if a person of Indian Origin has come to India before 1st day of January, 1966 from erstwhile East Pakistan now Bangladesh and if his name is entered in the Electoral roll and he is ordinarily a resident in Assam since his date of entry he shall be deemed to be a citizen of India from that date viz 1st January, 1966. But if any foreigner has entered India after that date and prior to 25th March, 1971 and without any valid passport or other travel document he shall be deemed to be an "Illegal Migrant" as defined in Section 2(C) of the Act. Section 8 of the Act, inter alia, provides that if any question arises as to whether a person is or is not an illegal migrant, the Central Govt. may, whether such question has arisen on a representation made by such person against any order under Foreigner Act, 1946 requiring him not to remain in India or to any other effect or has arisen in any other manner whatsoever, refer such question to a Tribunal constituted under the Act for such decision, Section 23 of the Act, inter alia, provides that after establishment of the Tribunal or Appellate Tribunal under the Act no Civil Court shall have jurisdiction to entertain any question relating to that matter of illegal migrants and no injunction shall be granted. Section 24 is a transitory provision and it inter alia, provides that after establishment of a Tribunal under the Act if any suit or legal proceeding is pending in a Civil Court, the Civil Court shall without deciding the question of illegal migrants transfer the suit or other legal proceeding to the Tribunal.

6. The above being the legal position, if a person claims that he is a citizen of India by virtue of entering into this country on or before 1st day of January, 1966 and on fulfilment of the conditions as laid down in Section 6A of the Citizenship Act he shall be deemed to be a citizen of India. But the section also provides that any person seeking registration under the said Section 6A, the opinion of the

Tribunal constituted under Foreigners Order, 1964 shall be deemed to be the sufficient proof regarding registration. On the other hand if a foreigner enters India after 1-1-1966, but before 25-3-1971 his question has to be determined by the Tribunal constituted under the Act.

7. As in the case in hand a specific statement has been made in the plaint that the plaintiff No. 1 entered India with his father in the year 1940, the plaintiffs can be deported only after obtaining opinion of the Foreigners Tribunal constituted under the Foreigners Act, 1946 and if such an opinion is against the plaintiffs. Accordingly, if the concerned authority wants to deport the plaintiffs it may be done only after getting such an opinion from the Tribunal constituted under the Foreigners (Tribunals) Order 1964. If any such reference is made to the Tribunal, it shall be decided after issuing notice to the plaintiffs and giving them reasonable opportunity of being heard. Till the legal formalities are complied with the concerned authority shall not deport the plaintiffs from India.

8. Accordingly, the petition is accepted, rule is made absolute with the direction stated above by setting aside the impugned judgment, and order.