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**(2006) 01 GAU CK 0066**  
**In the Gauhati High Court**  
**Case No : Writ Petition (Civil) No.7345 of 2003**

Md.Rasul Khan

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

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**Date of Decision :** 04-01-2006

**Acts Referred:**

Constitution of India, 1950 — Article 226, 226

**Citation :** (2008) 3 GLR 223

**Hon'ble Judges :** B.K.Sharma, J

**Bench :** Single Bench

**Advocate :** B.K.Bhattacharjee, D.J.Barman, R.Chakraborty, Advocates appearing for Parties

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## Judgement

1. The petitioner claiming himself to be a citizen of India and a permanent resident of Village Duara Pathar, Jaipur, in the district of Dibrugarh has invoked the writ jurisdiction of this court making a challenge to the order of expulsion from India dated 12.6.2003 issued by the Superintendent of Police (B), Dibrugarh pursuant to the order dated 27.11.2002 passed by the Foreigners Tribunal, Dibrugarh in Case No. 1498/2001.

2. The primary ground of assailing the aforesaid orders, more particularly the one dated 27.11.2002 passed by the Tribunal is that the order has been passed without any notice to the petitioner. It is the specific case of the petitioner that he was not aware of any proceeding held by the Foreigners Tribunal, Dibrugarh and it was only from the order dated 12.6.2003 issued by the SP, Dibrugarh, he could come to know about the order passed by the Tribunal. Pursuant to the order passed by the Tribunal, the SP, Dibrugarh by his order dated 12.6.2003 directed the petitioner to leave India within a period of 30 days and execute a bond. It was also stated in the order that on failure to execute the bond, he would be liable to be arrested. Further direction was issued to the petitioner to report his departure to the Officerincharge, Jaipur Police Station.

3. As per the averments made in the writ petition the aforesaid order dated

12.6.2003 was actually received by the petitioner on 5.8.2003 when he was picked up by the police and compelled to execute a personal bond with a bond of surety both dated 5.8.2003. As stated above, it is the definite case of the petitioner that the proceeding in the tribunal was behind his back and he was unaware of the said proceeding being not furnished with any notice. In this connection the statements made by the petitioner in the writ petition are quoted below :

"10. That the petitioner begs to state that the Superintendent of Police (B), Dibrugarh, made a reference to the Foreigners Tribunal, Dibrugarh, stating that the petitioner is not a citizen of India and on such information, the Foreigners Tribunal, Dibrugarh, passed an order dated 27.11.2002 without any notice to the petitioner whereby the petitioner was declared to be an illegal migrant under the provisions of the Illegal Migrants (Determination of Tribunal Act, 1983, as amended on 1988). Be it stated herein that the petitioner was not at all aware of any proceeding held by the Foreigners Tribunal, Dibrugarh, against him and, therefore, he could not even defend his case to establish his citizenship status. It was only from the order dated 12.6.2003 issued by the Superintendent of Police (B), Dibrugarh, whereby an expulsion order was issued that the petitioner came to learn that he has been sought to be expelled from India purported on the basis of the order dated 27.11.2002 passed by the foreigners Tribunal, Dibrugarh....

12. That the petitioner respectfully begs to state that the learned Foreigners Tribunal, Dibrugarh, has passed the purported order dated a 27.11.2002 without affording any opportunity to the petitioner. This position is quite clear from the order dated 12.6.2003 (expulsion order) passed by the Superintendent of Police (B), Dibrugarh, directing the petitioner to leave India. This order has also been passed without affording any opportunity to the petitioner.

14..... The learned Foreigners Tribunal, Dibrugarh ought to have been given adequate opportunity to the petitioner to establish his case before holding that he is not a citizen of India.....?

4. The writ petition was first entertained by order dated 11.9.2003. Since the copy of the order dated 27.11.2002 passed by the Tribunal was not annexed to the writ petition, a direction was issued to place the same on record. In the meantime, the order of expulsion, dated 12.6.2003 was stayed. The matter was listed thereafter on 24.8.2004 and the learned counsel for the petitioner took adjournment to comply with the order dated 11.9.2003. However, subsequently, the copy of the order was furnished as recorded in the order dated 27.8.2004.

5. By order dated 8.4.2005, the records of the Foreigners Tribunal pertaining to the case was called for, this court noticing the contradiction regarding service of notice on the petitioner on the basis of the averments made in the writ petition that no notice was served, which is contrary to the order passed by the Tribunal in which it has been clearly stated that the petitioner did not appear in spite of

service of notice on the petitioner, issued direction for production of the records of the Tribunal. Pursuant thereto, the records have been produced.

6. I have heard Mr. B.K. Bhattacharjee, learned counsel for the petitioner and Ms. R. Chakraborty, learned State Counsel appearing for the respondents. Mr. Bhattacharjee, during his argument insisted for remanding back the matter to appropriate forum for fresh adjudication on the sole ground of the impugned order dated 27.1.2002 being ex parte. On being pointed out that the records of the Tribunal clearly indicates service of notice on the petitioner, he submitted that for ends of justice the matter needs fresh consideration of the appropriate forum.

7. Countering the above argument, Ms. R. Chakraborty, learned State Counsel submits in reference to the records of the Tribunal that notice having been served on the petitioner, the plea of the petitioner that he was unaware of the proceeding before the Tribunal is based on falsehood and consequently, on this score alone the writ petition is liable to be dismissed.

8. I have considered the submissions made by the learned counsel for the parties and have gone through the records. There is absolutely no truth in the plea of the petitioner that no notice was served on him and that he was unaware of the proceeding before the Tribunal. Not only the notice was served on him, he in fact appeared before the Tribunal through his appointed advocate, one Sri Omprakash Agarwalla. It is absolutely clear from the records that the notice was issued to the petitioner, and his wife Smt. Jaheda Khan on 23.10.2002 received the same. Due certificate regarding service of notice was furnished by the process servers vide their endorsement on the body of the notice dated 28.10.2002.

9. The petitioner having come to know about the aforesaid proceeding before the Tribunal, duly executed Vakalatnama authorizing the aforementioned counsel to appear and conduct the case on his behalf. The records have further revealed that an adjournment petition was filed on 7.11.2002 duly signed by the petitioner. The adjournment was granted by the Tribunal by its order dated 7.11.2002 fixing the matter on 22.11.2002 on which date the petitioner remained absent. Accordingly order for ex parte hearing was passed. On the date of hearing of the case also the petitioner remained absent and consequently, the impugned judgment and order dated 27.11.2002 was passed by the Tribunal.

10. Can in the aforesaid background, the plea of the petitioner that no notice was served on him and that he was unaware of the proceeding is tenable. Certainly not. The falsehood to which the petitioner resorted to in approaching this court invoking its writ jurisdiction stares on the face of it. As against the above quoted statements made in the writ petition making specific statement of not serving any notice on the petitioner and he being unaware of the proceeding before the Tribunal, the records have clearly revealed that the petitioner was not only aware of the proceeding, but he, in fact appeared before the Tribunal and took part in the proceeding on the first day by filing an application for adjournment. On this

sole ground of resorting to falsehood in invoking the writ jurisdiction of this court with material suppression of fact, the writ petition is liable to be dismissed.

11. The records of the case have made further revelations about which there is no mention in the writ petition. As against the bold statement made in the writ petition that the name of the petitioner along with his wife was included in the voter list and in support of such claim annexing AnnexureD document, on perusal of the same along with the records it is clear that such plea of the petitioner is not at all correct. AnnexureD is a declaration made by the petitioner himself towards preparation of draft electoral role. The illegal and false declaration made by the petitioner came to light when on the village survey made by one a Sri Bibhuti Hazarika, SI of Police, Joypur found the petitioner without any valid document regarding Indian citizenship. It was found that the petitioner entered into India after 25th March, 1971.

12. On the basis of the aforesaid survey made by the SI of Police, a prayer was made by him to the Superintendent of Police (Border) Dibrugarh by his letter dated 22.3.2001 for registering a case under the IMDT Act as was prevalent at that point of time. In the letter the original address of the petitioner was indicated as VillageBhurtolla Gram P.S. Moulabi Bazar, DistrictSylhet (Bangladesh). Along with the letter the statement of the petitioner recorded in Assamese and duly signed by him, was also sent. In the statement, the petitioner admitted the fact of his coming to India during Bangladesh War. The English version of the statement recorded in Assamese reads as follows:

"My name is Md. Rasul Khan. Father"s name is Md. Mohammad Khan, Village Duarapathar. My age would be 42 years approximately. I had worked at Jaipur Birla Wood Craft from 16.4.79. The Birla Company brought me from Murshidabad. I was at Refugee Camp of Murshidabad. I came during the Bangladesh war and remained at the Refugee Camp. I do not know whether my parents have died. I got married at Jaipur. I do not have any documents and never cast vote in Assam. I have only this much to say."

13. After following the due procedure as envisaged under the then IMDT Act, the matter was referred to the Tribunal in which Case No, DDT 1498/2001 was registered against the petitioner. As to what transpired thereafter has been noticed above. All these aspects of the matter have been conveniently withheld and suppressed by the petitioner and an attempt has been made to give a different version, which is contrary to the records.

14. Law is wellsettled that an application under article 226 of the Constitution, would be refused without a hearing on the merits or a rule nisi discharged, if it appears that the applicant has made a deliberate concealment of material facts with a view to mislead the court. Where a person obtains an order from the court playing fraud or making false representation, that order as well as all advantages obtained thereunder shall be cancelled. Natural justice is not attracted to such a case.

15. As has been held by the Apex Court in *Trilokchand Motichand v. H.B. Munshi*, AIR 1970 SC 898, a petitioner has no right to move the court for enforcement of his fundamental right on a petition containing misleading and inaccurate statement, and if he file such a petition, the court will dismiss it. A calculated and designed suppression of material facts in order to secure admission an interim relief/which, if disclosed, would have disentitled the petitioner to the extraordinary remedy, or in any case, would have materially affected the merits on both the interim and ultimate relief claimed would deprive the petitioner from considering his case on merits.

16. As a general rule, suppression of material facts by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the court to deter a litigant from abusing the process of court by deceiving it. In the instant case, the petitioner is not entitled to any relief for not making true disclosure of the facts. In order to put forward his case of a violation of principles of natural justice, he has chosen to suppress the material facts. But for the suppression and misrepresentation in respect of service of notice on him, perhaps this court would not have granted the interim relief to him. The petitioner not only received notice from the Tribunal, but also appeared before the Tribunal and at the first instance participated in the proceeding by filing adjournment petition. Thereafter on subsequent dates he remained absent. He, suppressing this fact, filed the writ petition making the above statement claiming that notice was not served on him and that he was not aware of the proceeding before the Tribunal. He has also suppressed the basic fact of investigation by the police and furnishing of his written statement in which he himself admitted that he had come from Bangladesh during Bangladesh war.

17. All the above facts were material for proper adjudication of the writ petition and the petitioner being fully aware of the consequence and likely results of such basic facts, decided to withhold the same from the court taking a chance for favourable consideration under the impression that such suppression would go unnoticed in absence of the record of the Tribunal. The petitioner at the first instance did not produce the copy of the order passed by the Tribunal in which it has been clearly recorded that notice was duly served on him. However, when the same was produced upon insistence of this court, the fact of service of notice came to light which led to calling for the records of the Tribunal. Now the records have made the above revelations.

18. As noticed above on the sole ground of suppression of material facts, the writ petition is liable to be dismissed. The fact of the case as has been disclosed from the records of the Tribunal also deserves dismissal of the writ petition. In the proceeding before the Tribunal, the Inquiry Officer, i.e., S.I. of Police, Jaipur Police Station was examined and he duly corroborated the facts revealed from investigation, which clearly established that the petitioner is an illegal migrant to India after the cut off date, i.e., 25.3.1971.

19. The Apex Court in the case of *Sarbananda Sonowal v. Union of India*, AIR

2005 SC 2920, while holding that the provisions of Illegal Migrants (Determination by Tribunal) Act, 1983 and the rules of 1984 framed thereunder ultra vires the Constitution of India took note of the report of the Governor of Assam dated 8.11.1998 furnished to the President of India. In the report as noticed by the Apex Court, it was highlighted that unabated influx of illegal migrants of Bangladesh into Assam has led to a perceptible change in the demographic pattern of the State and has reduced the Assamese people to a minority in their own State, The report further stated that such influx is a contributory factor behind the outbreak of insurgency in the State and illegal migration not only affects the people of Assam but has more dangerous dimensions of greatly undermining our national security. The report further stated that Pakistan's I.S.I, is very active in Bangladesh supporting militants in Assam. Muslim militant organizations have mushroomed in Assam.

20. In the aforesaid judgment, the Apex Court on the basis of the materials furnished before it, has made the following observation :

"38This being the situation there can be no manner of doubt that the State of Assam is facing "external aggression and internal disturbance" on account of large scale illegal migration of Bangladeshi nationals. It, therefore, becomes the duty of Union of India to take all measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined in Article 355 of the Constitution. Having regard to this constitutional mandate, the question arises whether the Union of India has taken any measures for that purpose."

21. The concern expressed by the Apex Court in the aforesaid case need not be emphasized again. Here is a case in which the petitioner himself admits that he is a Bangladeshi national and come to India during the Bangladesh war and on being detected as a foreigner by the Tribunal, could resort to all kind of falsehood even by declaring himself to be an Indian citizen towards invoking the writ jurisdiction of this court. There is no gainsaying and as has been agitated and projected time and again by all Concerned not interested in politics and vote bank, many more such foreigners are freely moving in Assam causing serious threat to the identity of the indigenous people of State and perceptible change in the demographic pattern of the State. The report of the Governor as noticed by the Apex Court in the aforesaid case of Sarbananda Sonowal makes shocking revelations. If timely action is not taken by all concerned including the political parties without being guided by their narrow political interest mortgaging national security itself, such cancerous growth of foreigners would engulf not a only the State of Assam but the entire North Eastern Region. A concerted and unified move of all patriotic organizations and individuals, to curb the menace is the need of the hour.

22. Writ petition stands dismissed. The Superintendent of Police, Dibrugarh shall take immediate steps for deportation of the petitioner b and any other persons connected with him and who are found to be illegal migrants to India. It is also expected that the said Superintendent of Police and for that matter all the

Superintendents of Police operating in their respective districts will take immediate steps for detection and deportation of illegal migrants.

23. Let the records of the case be sent back to the Tribunal. A copy of this judgment and order shall be immediately sent to the Superintendent of Police, Dibrugarh for his necessary follow up action.

24. Bring this judgment and order to the notice of the Deputy Registrar (J) for timely necessary follow up action,