
(2012) 06 GAU CK 0117
In the Gauhati High Court
Case No : Writ Appeal No. 70 of 2012

Mozidur Rahman Akond (Md.)	Vs	APPELLANT
Union of India & Ors.		RESPONDENT

Date of Decision : 14-06-2012

Acts Referred:

Citation : (2012) 4 GLT 387

Hon'ble Judges : Amitava Roy, J and Indira Shah, J

Bench : Division Bench

Advocate : Mr. D.R Chaliha, Sr. Advocate, Mr. U.R Chaliha, Md. S. Islam , Mr. M. Choudhury??Advocates appeared for the Respondents: Mr. M. Bhagawati, Central Government Counsel , Mr. RS. Deka, GA, Advocates appearing for Parties

Judgement

Amitava Roy, J.—Being aggrieved by the judgment and order dated 1.3.2012 rendered in WP(C) No. 2147/2009 sustaining the determination made by the learned Foreigners" Tribunal, Kamrup (Metro) adjudging the appellant/writ petitioner to be a foreigner under the Foreigners" Act, 1946 (for short, hereinafter referred to as "the Act"), he is in appeal for redress.

2. We have heard Mr. D.P. Chaliha, Senior Advocate for the appellant; Mr. M. Bhagwati, learned Central Govt. counsel for the Union of India and Mr. P.S. Deka, learned Govt. Advocate for the State respondent.

3. Sans unnecessary details, the pleaded facts are that on a reference made against him a proceeding being FT Kamrup(M) Case No. 429/2007 was registered against the appellant/ writ petitioner under the Act on the imputation that he was a Bangladeshi national and had entered Assam (India) after 25.3.1971 and had been residing in the Indian territory illegally. On receipt of the notice of this proceedings, the appellant/ writ petitioner appeared before the learned Tribunal and filed three documents, namely, (i) photocopy of the voters" list; (ii) photocopy of NRC; and (iii) photocopy of Gaon Panchayat certificate in support of his plea that he was not a foreigner. Admittedly, thereafter he could not appear in the proceedings as, according to him, the houses of his locality including that

of his were gutted in a devastating fire. It was also pleaded by him that he was assured by the staff of the learned Tribunal that his documents were adequate enough to sustain his stand.

4. It was after receiving the Quit India Notice from the office of the Senior Superintendent of Police (B), City Guwahati on 12.5.2009 and on enquiry being made in the office of the learned Tribunal that he was served with a copy of the judgment and order dated 27.2.2008 rendered by it declaring him to be a foreigner under the Act. He thereafter approached this Court with the aforementioned writ petition assailing this determination asserting inter alia that he was a citizen of India by birth and that his father wore the same nationality and had been living in India since before 1940. Along with the writ petition, he produced certain documents as would be dwelt upon subsequent hereto.

5. The Additional Superintendent of Police (B) Dhubri, Assam in para 6 of his affidavit averred that the name of the father of the appellant/ writ petitioner was enrolled in NRC, 1951 and also in the voters' list of 1966 of Village 215 Monirchar Boidergaon under 32 South Salmara LAC. That the name of the appellant/ writ petitioner was enumerated in Village 2125 Monirchar Boidergaon under 22 South Salmara LAC in 1992 and that his name was included in the voters' lists of 1997 and 2008 of the same village was also stated. This affidavit signed by the above referred deponent, however, did not indicate the manner of affirmation of these averments in the concluding paragraph i.e. para 7 of his counter, though he did so visavis the contents of paragraphs 1 to 4 as true to his knowledge.

6. As the records would reveal, in course of the writ proceedings the appellant/ writ petitioner though directed to surrender before the Senior Superintendent of Police (B) City Guwahati, he neither did so nor could he be arrested by the police. Instead on 1.11.2011 and 17.12.2011 he filed two additional affidavits through others. Whereas in his first affidavit he contended that after the institution of the writ petition he had gone to Meghalaya and had returned therefrom only in the month of August, 2011; along with the second affidavit filed through one Mominur Islam, he submitted certain additional documents. The learned Single Judge noticing certain anomalies in the name of the appellant/ writ petitioner in the documents sought to be relied upon by him, caused enquiries to be made and to further the purpose also summoned the original records which, as the order dated 11.1.2012 would reveal, were returned after due scrutiny. By the judgment and order impugned herein, the learned Single Judge rejected the appellant/ writ petitioner's challenge on the following grounds:

a) Out of the three documents (all photocopies) submitted before the learned Tribunal, the first, which is not legible, contained the purported signature dated 19.1.89 of the Secretary, South Salmara Mondol Congress (I) Committee. The said document represented to be an extract of a voters' list contained the names of Abdul Karim and Alchan Nessa Bibi, aged 35 and 25 years.

The second document is dated 6.10.85 purportedly reflecting the names of nine persons, one of whom is Noor Bhakta Sk, son of Abdul Sk, aged 16 years.

The third document is dated 8.8.2005 purportedly issued by a Gaon Panchayat certifying that one Mozidur Rahman Akand, son of Nur Bokto Akand was a resident of the said Panchayat under P.S. South Salmara in the district of Dhubri.

b) These documents were not proved and exhibited by the appellant/writ petitioner in the proceedings before the learned Tribunal.

c) The appellant/writ petitioner's attempt to shift the blame on the office staff of the learned Tribunal assuring him not to worry about the proceedings was not tenable as the burden of proof under Section 9 of the Act is on the proceedee.

d) He did not respond to the order of this Court directing him to surrender before the Senior Superintendent of Police (BO, City Guwahati and could be eventually arrested on 22.9.2011 following constant monitoring of the case by the Court.

e) The name of the appellant/ writ petitioner and his father appeared differently in several documents filed along with the additional pleadings which render the claim of his citizenship of India untrustworthy. There is no explanation to justify such variations.

f) There is no explanation as to why the appellant/ writ petitioner could not produce all these documents before the learned Tribunal.

g) In exercise of the writ jurisdiction no roving enquiry into the disputed facts is called for.

7. Mr. Chaliha has emphatically urged that the learned Tribunal and the learned Single Judge having failed to construe the documents filed by the appellant/ writ petitioner in the right perspective, the impugned decisions are liable to be interfered with in the interest of justice. Referring to the affidavit filed the Additional Superintendent of Police (B), Dhubri, the learned senior counsel has insisted that as thereby the authenticity and adequacy of the documents filed by the appellant/ writ petitioner in substantiation of his claim of Indian citizenship had been admitted in categorical terms, the learned Single Judge fell in error in discarding the same. According to him, it is apparent from the order dated 11.1.2012 passed by the learned Single Judge on the culmination of the necessary enquiries made by him that the contents of paragraph No.6 of the affidavit of the Addl. Superintendent of Police (B), Dhubri had been based on the original records and, thus, the documents relied upon by the appellant/ writ petitioner constitute unimpeachable testimony of his claim of Indian nationality.

8. Mr. Bhagawati, however, insistently urged that considering the form of the affidavit submitted by the Addl. Superintendent of Police (B), Dhubri, no credibility whatsoever to the documents relied upon by the appellant/ writ petitioner can be attributed and, thus, in the teeth of the detailed discussion and the reasonings recorded by the learned Single Judge to discard the same, no

interference in this appeal is warranted. The learned State counsel endorsed this view as well.

9. We have analysed the pleadings of the parties and the documents accompanying the same. We have perused the above referred order dated 11.1.2012 as well. It is obvious from the affidavit filed by the Addl. Superintendent of Police (B), Dhubri that the averments made in paragraph No. 6 therein pertaining to the documents of the appellant/ writ petitioner have not been affirmed at all as required in law. Paragraph No. 7 of the affidavit which recites the mode of affirmation of the averments made in the preceding paragraphs does not refer to the paragraph No. 6 at all. The averments contained in paragraph No.6 of this affidavit, therefore are dehors any affirmation by the deponent and, thus, are of no evidentiary relevance. The order dated 11.1.2012 though suggests that the relevant records of the learned Tribunal had been examined, neither the same nor the impugned judgment and order demonstrate that the recitation in paragraph No.6 of the affidavit filed by the Addl. Superintendent of Police (B), Dhubri visavis the documents of the appellant/writ petitioner had been made on the basis thereof (records). In that view of the matter, the plea of authenticity and adequacy of these documents based on admission of the State respondents referring to the official records does not commend for acceptance.

10. The appellant/writ petitioner, to start with, has offered his name with several aliases. Noticeably, however, he has chosen not to name his father as Nur Bakta Bepary. Whereas his name in the High School Leaving Pass Certificate issued in the year 1993 by the Board of Secondary Education, Assam is recorded as Md. Mozidul Rahmal Akond with his date of birth as 30.4.75, his name in the marksheet for the said examination registers it as Md. Mozidur Rahmal Akond. His name in the admit card issued by the Assam Higher Secondary Education Council in the year 1994 and 1995 is shown as Mozidur Rahman Akand, son of Nur Bakter Akand and Md. Mozidur Rahman Akand, son of Md. Nur Bakta Bepary. In the voters' list of 1992, he is enlisted as Mozidur Rahman, son of Noor Bakta Akond, aged 18 years. Whereas in the certificates issued by the RBPHS School, South Salmara, Patakata Janapriya High School and Mandur Gaon ME School, P.O. Sarkarer Gaon, his father's name is again shown as Md. Nur Bakta Bepary, his father's name in the voters' list of 1966 is registered as Nur Bakt Sheikh. His father's name is registered in the excerpt of the document stated to be NRC issued by the Officer in Charge of South Salmara Police Station on 6.10.85 as Noor Bhakta Sk.

11. On a cumulative consideration of all above, the view taken by the learned Single Judge to reject these documents as unassailable proof of his identity and citizenship of India, according to us, appears to be a plausible one. To reiterate, the affidavit filed by the Addl. Superintendent of Police (B), Dhubri can by no means be construed to be an admission of the genuineness and sufficiency of these documents to buttress the claim of Indian citizenship of the appellant/ writ

petitioner. These documents, as the above discussion would demonstrate, are laden with inherent anomalies and inconsistencies rendering the same untrustworthy and unreliable.

12. Having regard to the seriousness of the issue involved with the above state of the documents furnished by the appellant/ writ petitioner, we are disinclined to intervene.

13. The judgment and order impugned is affirmed. The appeal is dismissed. No costs.