
(2009) 12 GAU CK 0023
In the Gauhati High Court
Case No : Writ Petition (C) No. 4954 of 2009

Mrs. Moriom Nessa @ Moiron @ Mrs. Moiron Nessa	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Foreigners Act, 1946 — Section 9

Citation : (2010) 2 GLD 131

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

Bench : Single Bench

Advocate : M.A. Sheikh, for the Appellant; P. Das, CGSC, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The petitioner identifying herself with three names, namely, Mrs. Moriom Nessa @ Moiron @ Mrs. Moiron Nessa, wife of Md. Mohar Ali, has filed this writ petition, assailing the legality and validity of the judgment and order dated 10.7.2008, passed by the Foreigners Tribunal, Kamrup(M) in case No. FT Kamrup(M) 320/07, declaring her husband Md. Mohar Ali to be a foreigner (illegal Bangladeshi migrant), who entered into Assam after the cut-off-date i.e. 25.3.1971. According to the petitioner, she is an Indian citizen, by birth and is a resident of the address furnished in the writ petition.

2. In the writ petition, the petitioner has named some persons as their parents and grand parents claiming the their names appeared in the voter lists of 1966 and 1971. According to the petitioner, her husband Md. Mohar Ali was born in the year 1957. They have 7(seven) children. In paragraph 7 of the writ petition, it has been stated that their names appeared in the voter list of 1997 and so also 2005. Annexure-2 is a self declaration for inclusion of name in the voter list. Said declaration was made on 5.5.1993. Such declaration was made by the husband of the petitioner along with his wife i.e. the petitioner. The approximate age as in January, 1993 was declared as 41 and 31 years respectively. The said documents being a self declaration, is of no evidentiary value.

3. Annexure-3, which is a typed copy of the voter list of 1997 contained the name of the husband of the petitioner and one Moriom, which the petitioner claims to be her name.

4. It is on the above basis, the petitioner claims that she and her husband are Indian citizens.

5. I have heard Mr. M.A. Sheikh, learned Counsel for the petitioner as well as Mr. P. Das, learned CGSC. I have also heard Ms. R. Chakraborty, learned Addl. Senior Govt. Advocate, I have also perused the records of the Tribunal.

6. On perusal of the records, it appears that the petitioner's husband inspite of receipt of notice did not appear before the Tribunal. The dates on which he remained absent are 17.10.2007, 17.12.2007, 4.2.2008, 10.3.2008, 5.5.2008, 31.5.2008 and 10.7.2008, on which date the Tribunal passed the impugned judgment and order.

7. In paragraph 7-A of the writ petition, it has been stated that the husband of the petitioner on receipt of the notice appeared before the Tribunal but could not engaged any advocate. Further statement made is that due to poverty, he could not appear before the Tribunal any more. It is on the basis of such explanation, the petitioner has invoked the writ jurisdiction of this Court praying for setting aside and quashing the order of the Tribunal.

8. As per Section 9 of the Foreigners Act, 1946, burden lies on the person concerned to establish Indian citizenship, which the petitioner's husband failed to discharge. The reference against the petitioner's husband was made to the Tribunal by the authorities when it was found that he is not an Indian citizen and migrated to Assam from Bangladesh after the cut-off-date i.e. 25.3.1971. Notice was duly served on the petitioner but he did not respond to the proceeding. There is nothing to show that the petitioner had appeared before the Tribunal on the first date as has been claimed in the writ petition.

9. If in the aforesaid fact-situation, the Tribunal had passed the impugned judgment and order ex parte, no fault can be attributed to the Tribunal. There being failure on the part of the petitioner's husband to discharge the burden of proof to establish his Indian citizenship, the Tribunal rightly passed the impugned judgment and order. Coming to the writ Court, the petitioner has taken recourse to all sorts of plea. She has placed reliance on typed copies of 1966 and 1997 voter lists, so as to claim Indian citizenship, that too, by birth.

10. As already noted above, Annexure-2 is a self declaration of 1993 in which the age of the petitioner's husband was declared as 41 years. If that be so, by now he is almost 57 years of age and his name would have appeared in many of the voter lists published periodically. It was only in 1997, his name was included in the voter list and upon enquiry it was found that he is not an Indian citizen. Accordingly, the reference was made. The husband of the petitioner having failed to discharge the burden of proof as envisaged u/s 9 of the Foreigners Act about

which emphasis has been made in Sarbananda Sonowal reported in AIR 2005 SC 292. The Tribunal has rightly answered the reference against him declaring him to be a foreigner (illegal Bangladeshi migrant), who entered into India (Assam) after the cut-off-date i.e. 25.3.1971.

11. In Bhanwaroo Khan and Others Vs. Union of India (UOI) and Others, long stay in the country and enrolment in the voter lists would not confer any right on an alien to continue to stay in the country.

12. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly it is dismissed.

13. By order dated 13.11.2009, certain directions were issued to the Superintendent of Police, Kamrup(M) to ensure presence of the petitioner's husband. It is on record that the petitioner's husband is in custody of the Police. Superintendent of Police, Kamrup(M) is now directed to keep the petitioner's husband in jail/detention camp till such time deported/pushed back to Bangladesh. Direction is also issued to the Deputy Commissioner, Kamrup(M) to ensure deletion of the name of the petitioner from the voter list, if any.

14. Let the compliance report be furnished by the Superintendent of Police and the Deputy Commissioner, Kamrup(M), for perusal of which, the Registry shall list the matter again on 29.1.2010.

15. Let copies of this judgment and order be sent to the Union of India in the Home Ministry as well as to the Superintendent of Police and the Deputy Commissioner, Kamrup(M). Further a copy of this order be furnished to Ms. R. Chakraborty, learned Addl. Senior Govt. Advocate, for the necessary follow up.

16. Let the LCR be sent down immediately alongwith a copy of this judgment and order.