
(2021) 07 GAU CK 0121
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 759 Of 2018

Mukti Rani Paul @ Mukta Paul	Vs	APPELLANT
Union Of India		RESPONDENT

Date of Decision : 20-07-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Order 9 Rule 13
Limitation Act, 1963 — Section 5

Citation : (2021) 07 GAU CK 0121

Hon'ble Judges : N. Kotiswar Singh, J;Soumitra Saikia, J

Bench : Division Bench

Advocate : H.R.A. Choudhury, A.M. Ahmed, H. Ahmed, S. Das, A. Verma, A. Bhuyan, L. Devi

Final Decision : Disposed Of

Judgement

1. Heard Ms. S. Das, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K. Dev Choudhury, learned ASGI, for respondent No.1 as well as appearing as standing counsel, NRC, for respondent No.6; Ms. A. Verma, learned Special Counsel, FT, appearing for respondent Nos.2&"4 and Mr. A. Bhuyan, learned standing counsel, ECI, appearing for respondent No.5.
2. The present petition has been filed being aggrieved by the ex-parte order dated 10.08.2007 passed in F.T. Case No.120/2006 by which the petitioner has been declared a foreigner and the subsequent order dated 10.06.2009 in the said case and order dated 08.11.2017 passed in Misc. Case No.15/2017 declining to revisit the ex-parte order on the ground of delay.
3. The petitioner was initially proceeded against before the Foreigners' Tribunal-1, Karimganj on a reference being made against her under Ref. Case

No.124/2000. As per the aforesaid reference, notice was issued to the petitioner. The petitioner duly received the notice. According to the petitioner, unfortunately, after initial appearance, the petitioner could not appear before the Tribunal on subsequent dates fixed as she was suffering from rheumatoid arthritis for the last 5 years before the reference and was undergoing treatment. Unfortunately, because of her inability to appear before the Tribunal, the matter was proceeded ex-parte on 10.08.2007 and the Tribunal declared the petitioner to be a foreigner who entered India illegally after 25.03.1971.

4. Subsequently, the petitioner on coming to know of the aforesaid ex-parte order, approached the Foreigners' Tribunal by filing a Misc. Case along with medical documents to show that she was suffering from rheumatoid arthritis as mentioned above because of which she could not appear and thus seeking recall of the ex-parte order. However, the Tribunal declined to entertain the same vide order dated 10.06.2009. Subsequently, the petitioner again filed another Misc. case before the Tribunal in 2017 for setting aside the ex-parte order as well as the earlier order dated 10.06.2009 with an application under Section 5 of the Limitation Act for condoning the delay in approaching the Court, which however, was also rejected by the Tribunal.

Thus, being aggrieved, the petitioner is before us.

5. Ms. S. Das, learned counsel for the petitioner submits that the inability of the petitioner to appear before the Tribunal was primarily due to the aforesaid ailment she was suffering from and from which she has not yet fully recovered and continues to suffer till now and as such, her absence before the Tribunal on the assigned dates was not deliberate or due to negligence but due to bonafide medical reasons and hence, has pleaded that the petitioner may be granted an opportunity to make her claim that she is an Indian and not a foreigner.

6. The petitioner also submits that the petitioner has adequate evidences to show that she is indeed an Indian citizen and not a foreigner.

7. The petitioner submits that the petitioner had passed HSLC Examination in 1986 from the Karimganj Government Higher Secondary School. It has been submitted that her father, late Hrishendra Chandra Paul was an Indian citizen and there was no finding by any authority that her father was a foreigner. In support of her claim that her father was an Indian citizen, she has

relied on the NRC document to show that the name of her father, Hrishendra Kumar Paul, S/O Late Girindra Kumar Paul is recorded as a resident of Village-Dolu, Dist-Karimganj under Ratabari Police Station, and enrolled as a voter under Sl. No.349 of 4 Ratabari Legislative Assembly Constituency in the year 1966. The petitioner has also relied on a Sale Deed executed on 26.05.1964 which shows that her father, Hrishendra Chandra Paul had purchased a plot of land from one Bishnu Charan Nath, S/o Late Sari Nath, resident of Chamayala of Cachar district thus, clearly indicating that her father was a resident of this country in the year 1964 and an Indian citizen. The petitioner has also drawn the attention of this Court to a voters list of 1977, where the names of her father, though wrongly written as Khosendra Paul, along with her mother Provabhati Paul and her siblings Ranjan Paul, Anjana Paul and Kajal Paul, are recorded. Accordingly, the petitioner has submitted that merely because of her absence before the Tribunal for bonafide reasons as mentioned above, she has been declared a foreigner though her parents and siblings are Indians. It has been accordingly submitted that, under the circumstances, if she is not given another opportunity to appear before the Tribunal, she will suffer great injury and irreparable loss as she will be treated as a foreigner by default and not based on merit. Accordingly, Ms. Das, learned counsel for the petitioner has prayed that the matter be remanded to the Tribunal for reconsideration.

8. Ms. Verma, however, has raised serious objections to this petition contending, inter alia, that first of all, the petitioner has approached this Court belatedly, after more than a decade of the passing of the ex-parte order on 10.08.2007 and accordingly, submits that if the petitioner did not appear before the Tribunal in spite of several opportunities given, only she herself has to be blamed. Further, it has been submitted that if such belated applications are entertained by this Court, it will open a floodgate of similar applications who were not diligent enough to pursue their cases before the Tribunal.

9. Ms. Verma also drawing attention of this Court to a document marked as Annexure-D showing the names of the family members of the petitioner in the voters list of 1977 submits that the name of the petitioner should have been also included in that voters list, which objection, however, has been countered by the learned counsel for the petitioner contending that, at that

relevant point of time the petitioner was not yet eligible for voting.

10. Ms. Verma also submitted that the name of her father recorded in the voters list of 1977 does not tally with the name of the father in the admit

card relied upon by the petitioner as well as in the reference made by the referral authority.

11. The original records of the Foreigners' Tribunal have been received and we have perused the records. Perusal of the original records of the F.T.

indicates that the petitioner was proceeded ex-parte vide order dated 10.08.2007 as the petitioner failed to appear on the dates fixed by the Tribunal.

12. Subsequently, the petitioner filed an application under Order 9 Rule 13 CPC along with an application under Section 5 of the Limitation Act, and

the records were put up on 28.11.2007. The matter was posted on 31.12.2007 where the parties were present, and the Tribunal after allowing

adjournment fixed the matter on 27.02.2008. When the matter was put up on 27.02.2008, the Member of the Tribunal was transferred and both sides

were also absent. Hence the case was adjourned to 02.05.2008. When the matter was listed on 02.05.2008, both the sides were absent and

accordingly, it was adjourned to 05.07.2008. When the matter was put up on 05.07.2008, the Member of the Tribunal was again transferred. The

petitioner was also absent. It was listed again on 05.09.2008, on which date the Member of the Tribunal was out of station on duty. Accordingly, the

matter was adjourned to 10.11.2008. When the matter was taken up subsequently on 23.12.2008, 24.02.2009, 27.04.2009 the petitioner remained

absent. Accordingly, the matter was fixed on 10.06.2009 but the petitioner was absent. Order dated 10.06.2009 also indicates that till then no Assistant

Government Pleader (AGP) was appointed. However, the Tribunal rejected the application of the petitioner under Order 9 Rule 13 CPC read with

Section 5 of the Limitation Act as the petitioner was absent, vide order dated 10.06.2009.

13. The matter stood as such till the petitioner again approached the learned Tribunal by filing an application on 05.07.2017. The matter was

accordingly put up on 11.07.2017 and thereafter, the matter was fixed on 27.07.2017 for filing of objection by the Assistant Government Pleader. On

27.07.2017 the matter was fixed for hearing on 19.08.2017. On 19.08.2017 the petitioner was present and gave her evidence. Thereafter, the matter

was fixed on 11.09.2017. The petitioner was also present on that day and she was cross-examined by the State. Subsequently, the matter was fixed on 26.09.2017 for argument. However, on 26.09.2017 the Member of the Tribunal was on leave. Subsequently, the matter was fixed on 24.10.2017, 31.10.2017 on which dates the petitioner was present and finally, the order was passed on 08.11.2017 rejecting the application of the petitioner by holding that the Tribunal was not satisfied with the application for condonation of delay. Accordingly, the application for setting aside the orders dated 10.08.2007 and 10.06.2009 was rejected.

14. Thus, from the above what is clear is that the Tribunal declined to entertain the application of the petitioner for condoning the delay in approaching the Tribunal for setting aside the ex-parte order dated 10.08.2007 and the order dated 10.06.2009. It is also clear that there was no consideration on merit of the issue of citizenship.

15. We have perused the evidence and the cross-examination of the petitioner in the aforesaid Misc. Case No. 15 of 2017. The evidences on record

indicate that the petitioner was indeed suffering from certain ailment i.e. rheumatoid arthritis, and she was undergoing treatment for it as evident from

the documents relied upon by the petitioner as well as the evidence before the Tribunal. There is also evidence to show that the petitioner had been

suffering from the aforesaid ailment since she was 19 years old and she has been undergoing treatment for the aforesaid ailment and she was

admitted in Karimganj Civil Hospital in 2010 as well as in 2016 and she had been declared 40% physically challenged after clinical examination by the

doctor. The evidence also shows that because of the aforesaid ailment, the movement of the petitioner has been restricted and she could not walk

without the help of other persons. Apart from that, it is shown that she was suffering from diabetes type-II, eye problem, hypertension and dental

disease during the aforesaid period. It has been also brought on record that she is unmarried and she is staying alone as all her brothers and sister had

been married and settled in other places and her parents also had expired in the year 2005 and as such she has been passing through trying times.

16. It was thus the submission of the petitioner that after the passing of the order dated 10.06.2009 rejecting her application for review of the ex-parte

order, she could not appear before the Tribunal because of her poor economic

condition and the prolonged illness she was suffering from.

17. Accordingly, it has been submitted that under the circumstances, if the delay is not condoned and if the petitioner is not allowed to contest the reference, she will suffer irreparable loss and injury.

18. We have noted that when the petitioner had approached the Tribunal in the year 2007 for recalling the ex-parte order, she had submitted a medical document i.e. an OPD registration card issued by the Medical and Health Officer, Karimganj Civil Hospital, dated 01.06.2007 stating that she was suffering from rheumatoid arthritis for the last 5 years and she was undergoing treatment and that she requires assistance from others for her daily activities. In the subsequent application filed in 2017 the petitioner also had annexed other documents of undergoing treatment in the Karimganj Civil Hospital, where she has been shown to be the daughter of one Late Hrishendra Chandra Paul. Various other medical documents also have been filed before the Tribunal by the petitioner for treatment during the period 1989, 1990, 2003, 2005, 2006, 2009, 2010, etc.

19. We are, thus, satisfied that there are sufficient materials to show that she has been suffering from the aforesaid ailment disease and undergoing treatment.

20. We have also noted that after the ex-parte order was passed by the Tribunal on 10.08.2007, the application filed by the petitioner for recalling the ex-parte order, could not be considered on as many as three times due to transfer/other official duty of the Member of the Tribunal.

We have also noted that in the last proceeding before the Tribunal in connection with the Misc. Case No. 15 of 2017, the petitioner applicant was present on all the dates fixed, thus showing the bonafide of the applicant.

21. We also have noted that the petitioner is seeking to establish that she is the daughter of one Hrishendra Chandra Paul who was an Indian citizen based on the NRC document, voters list, sale deed, academic and medical documents etc., as discussed above.

22. Thus, from the above, what transpires is that though the petitioner had remained absent on the assigned dates before the Tribunal, at the relevant time, she was suffering from the aforesaid illness and as such if she claims that she could not appear because of the said illness, considering the fact that this is an issue relating to the citizenship of a person we are inclined to take

a lenient view as regards the issue relating to the delay in approaching the Tribunal for reconsideration.

23. The documents relied on by the petitioner which have been brought to our notice, if proved, can certainly be the basis for claiming that the

petitioner is an Indian and not a foreigner. However, till we allow the petitioner to approach the Tribunal that issue cannot be settled.

24. Though as mentioned by Ms. Verma that there has been a long delay in approaching the Tribunal as well as this Court for setting aside the ex-

parte order, we are of the view that it will serve the interest of justice, considering the ailment the petitioner was suffering from and other adverse

circumstances as narrated above, to allow her to appear before the Tribunal. If the case of the petitioner is rejected by us, the result would be that she

will be treated as a foreigner despite possessing certain documents which prima facie show that she is an Indian and not a foreigner.

25. We are mindful of the long delay in approaching the Tribunal for review of the ex-parte order. Yet, in our view this technicality ought not to come

in the way of the petitioner to approach the Tribunal.

26. Citizenship is one of the most important rights of a person in today's world. It is the key to enjoyment of the rights guaranteed by law of the

land. It is through citizenship that a person can enjoy and enforce fundamental rights and other legal rights conferred by the Constitution and other

statutes, without which a person cannot lead a meaningful life with dignity. A person stripped of citizenship would be rendered a stateless person, if

any other country refuses to accept him or her as its citizen. Such is the overarching significance and importance of citizenship to a person. Therefore,

any such proceeding which has the potential of depriving citizenship ought to be accordingly, examined from that perspective also. In a normal

proceeding before a court of law, in spite of any adverse finding, the person will continue to enjoy the rights as a citizen. Only in a criminal proceeding

because of any adverse finding, some of the rights of a person may get affected because of incarceration, except in the case of capital punishment,

when life itself gets extinguished and all the rights also go away along with it. Though a proceeding under the Foreigners' Tribunal, is merely

quasi-judicial in nature, yet an adverse opinion by the Tribunal that the proceedee is a foreigner almost seals the fate of the proceedee as far as the

issue of citizenship is concerned, as the authorities are expected to declare such a person a foreigner in terms of the opinion of the Tribunal and he

would be liable to be detained and deported. Thus, ordinarily, such an opinion of the Tribunal, in our view, ought to be given after analyzing the

evidence that may be produced by the proceedee and not by way of default as has been done in the present case.

27. As noted above, the evidences sought to be relied upon, if proved, can certainly show that her father was an Indian citizen, in which case, the proceedee has to be treated as an Indian.

28. It may be noted that we had an occasion to deal with the issue of limitation in approaching the Tribunal belatedly for review of an ex-parte order,

in W.P.(C) No.1505/2020 [Abdul Salam Vs. Union of India & ors.] disposed of on 23.02.2021 wherein we had held that even though the provisions of

Limitation Act, 1963 may not be applicable in a proceeding before the Foreigners Tribunals, yet, there is nothing in the Foreigners (Tribunal) Order,

1964 which specifically excludes application of the principles of the Limitation Act. Hence, the principles underlying Section 5 of the Limitation Act

can be made applicable in the proceedings before the Tribunal, where it advances the cause of justice and also by applying the principle of ubi jus ibi

remedium.

29. Accordingly, under the facts and circumstances narrated above, we are inclined to allow this petition in the interest of justice in spite of the delay

in approaching the Tribunal. Resultantly, the impugned orders dated 10.08.2007 and 10.06.2009 passed in F.T. Case No.120/2006 as well as the

subsequent order dated 08.11.2017 passed in Misc. Case No.15/2017 are set aside.

30. The petitioner shall appear before the Tribunal within a period of 1(one) month and file her written statement and the necessary documents in

support of her claim that she is a citizen of India and the Tribunal will accordingly proceed with the matter in accordance with law.

31. With this order, the petition stands disposed of.

32. Send back the LCR forthwith.