
(2016) 01 GAU CK 0061
In the Gauhati High Court
Case No : WP (C) No. 5343 of 2013

Muncher Ali	Vs	APPELLANT
The Union of India and Others		RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 GauLJ 320 : (2016) 2 GauLT 986 : (2016) 2 NEJ 631

Hon'ble Judges : Biplab Kumar Sharma and Manojit Bhuyan, JJ.

Bench : Division Bench

Advocate : M.I. Hussain, Advocate, for the Appellant; M. Bhagabati, State Counsel and G. Sarma, Learned Counsel holding for S.C. Keyal, ASGI, for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—1. We have heard Mr. M.I. Hussain, learned counsel for the petitioners. Also heard Mr. M. Bhagabati, learned State Counsel and so also Ms. G. Sarma, learned counsel holding for Mr. S.C. Keyal, learned ASGI. We have also perused the entire materials on record along with the records received from the learned Tribunal.

2. This writ petition is directed against the order dated 29/08/2013 passed by the learned Member, Foreigners Tribunal-III, Barpeta, Assam in FT Case No. 95(III) of 2012 [Ref. IMDT Case No. 593/A/98] (State of Assam v. Muncher Ali). By the said order passed ex-parte, the petitioners have been declared to be foreigners of post 25/03/1971.

3. On receipt of the notice from the Tribunal, the petitioner appeared and filed written statement claiming that he is an Indian citizen, by birth. He stated that his father's name appeared in the voters' list of 1965 and 1970 and that of his mother in the voters' list of 1970. He projected one Kadam Ali as his elder brother and Amirzan Nessa as his wife with the further statement that his name

was included in the voters" list of 1997.

4. In support of his such claim he produced the following documents:--

"I. Ext. 1 voters" list of 1965 containing the name of one Hussain Miya, aged 34 years.

II. Ext. 2 voters" list of 1970 containing the name of one Hussain Miya, aged 39 years.

III. Ext. 3 voters" list of 1997 containing the name of one Hussain Ali, aged 85 years.

IV. Ext. 4 voters" list of 2010 containing the name of Kadam Ali and Amirzan Nessa.

V. Ext. 5 certificate of Gaonbura dated 04/08/2012 certifying the petitioner to be a resident of the particular locality.

VI. Ext. 6 Land Revenue Paying Receipt dated 04/08/2012 in the name of Hasen Ali.

VII. Ext. 7 Special Family Identity Card in the name of the petitioner.

VIII. Ext. 7(1) Special Family Identity Card in the name of Khematun Nessa whom the petitioner projected his mother.

IX. Ext. 8 voters" list of 1985 containing the name of Hussain Ali aged 52 years.

X. Ext. 9 voters" list of 1989 containing the name of Hussain Ali aged 70 years."

5. Discussing the entire evidence on record, the learned Tribunal found the discrepancies as recorded in para 14 of the impugned judgement, which are reproduced below:--

"14. On careful perusal of the W/S, the evidence the OP including the cross examination portion of his evidence, the deposition of Gaonbura (DW 2) recorded on oath as well as the documents exhibited and relied upon by the OP, some major discrepancies, as mentioned below, are found in his version, which casts a serious doubt about the truthfulness on his version as well as about his nationality.

(a) In the instant case, the OP has mentioned his age, in his evidence-in-chief on Affidavit, as 33 years on 21.01.2013 (the date of swearing of the Affidavit). Besides his own statement made in his Affidavit regarding his age, there are two more documents, relied upon by the OP, wherein his age is mentioned. In Ex-7 (special family identity card) issued in his own name, his age is mentioned as 35 years in the years 2012. The OP has himself admitted in his cross-examination that Ex-7 was issued in his name in 2012. The other document is Ex. 7(1) (another special family identity card) issued in the name of his mother on 25.07.2006 wherein his age is also mentioned as 35 years. From the above

mentioned three documents, it is found that the OP was of the age of 35 years in 2006 {as per Ex-7(1)}; 35 years in 2012 [as per Ex-7) and 33 years as per his own declaration made in his evidence-in-chief on Affidavit on 21.01.2013. Therefore, as far as the actual age of the OP or the date of his birth is concerned, there appears to be very self contradictory evidence on record. His age cannot be 35 years in the year 2006 and also in the year 2012. The same age cannot also decrease by two years as 33 years in 2013.

(b) The OP has stated in his W/S that he was born in village Helsapam and that the Gaonbura of the village Helsapam has issued a certificate in this respect. In para 9 of his evidence-in-chief also, filed by the OP on Affidavit, the OP has stated that he regard a certificate has been issued by the Gaonbura of Charge No. 13. On perusal of the linkage certificate (Ex-5) issued by Gaonbua of village Helsa, it appears clear that there is nothing in it to show that the OP was born in village Helsapam of Helosar Pam Gaon. Rather, in his cross-examination, Hikmat Ali (DW-2), the Gaonbura of village Helsa has stated that he cannot say as to on which date OP Munser Ali was born; that he first saw Munser Ali in his village, when he (OP) was of the age of about 8 to 10 years; that at the time he was not the Gaonbura of the said village; DW 2, the Gaonbura, has specifically admitted that he cannot say for certain without any official record and in absence of his personal knowledge that OP Munser Ali was born in village Helocha. Therefore, the statement of the OP that he was born in village Helsapam of Helosar Pam Gaon and that the Gaonbura has issued a certificate in this regard is found to be not supported or corroborated by the Gaonbura (DW-2) concerned. There is no other trust worthy evidence on record to show that the OP was born in village Helsarpam etc (in Assam). The specific evidence of Gaonbura (DW 2) in this respect goes against the OP and as such the OP's statement that he was born in a village in Assam remains not proved in absence of any other trust worthy evidence on record in this respect and, as such, is found to be not a correct statement.

(c) The OP has projected Hussain Ali as his father and Khemtana Nessa as his mother. In his W/S, the OP has stated that his father's name is recorded in the voters' list of 1965 and 1970; that his mother's name is also recorded in the voters' list of 1970, 1997 and 2010. In para 8 of his evidence in chief, the OP has stated that the names of his father was recorded as Hussain Miya in the voters' list of 1965 and that in the voters' list of 1970 his father's name was recorded as Hussain and that in the voters' list of 1997 his father's name was recorded as Hussain Ali. His statement that his father's name was recorded as Hussain in the voters' list of 1970 is also found to be not a correct statement as on perusal of the voters' list of 1970 (Ex-2) it is found that the name of one Hussain Miya and not Hussain is recorded therein. He (the OP) has declared in para 8 of his evidence in chief that Hussain Ali @ Hussain Miya @ Hussain is the same and one person and that actually his father's actual and proper name is Hussain Ali. The OP has filed one more Affidavit sworn by him on 04.10.2012 wherein in Para 7 of the said affidavit he has stated that due to wrongly written

title of his father he is facing many difficulties in his personal life so he declares that Hussain ali @ Hussain Mia @ Hussain is the same person; that the proper and correct name of his father is Hussain Ali."

6. Referring to the aforesaid exhibits, the learned tribunal has recorded the relevant findings in para 14(e) (f) (g) (h) (i) and (j). When the said findings are tested in reference to the evidence on record, we find that while in the voters" list of 1965 and 1970, the projected father of the petitioner is one Hussan Miya but in other voters" lists, name of one Hussain Ali appears with the variation of age as recorded in para 14(e) of the impugned judgement. No explanation was furnished as to the discrepancies. Likewise, there is also discrepancy in respect of the projected mother of the petitioner in the voters" lists. In absence of any explanation, the Tribunal rightly held that the projected parents in both the sets of documents are different persons. It has also been held that mere filing or exhibiting of a document in Court does not amount to proof of its contents. Admission of documents in Court may amount of admission of its contents but not the truth [refer , (2010) 4 SCC 491 (LICI v. Ram Pal Singh Bisen)].

7. As recorded by the Tribunal and also found in the evidence of the petitioner, one Kadam Ali is his elder brother and they have been living together in a joint family. Although the petitioner referred to Ext-6 Land Revenue Receipt but in cross examination, he stated that he did not know anything about the land for which the land revenue was paid. On the other hand, the petitioner himself admitted that they had no land except the land occupied by them at village Helocharpam. On the other hand, Ext-6 Land Revenue Paying Receipt pertains to a land situated at Kawaimari village.

8. The petitioner in his evidence categorically stated that in all the relevant documents, his father's name appeared as Hussain Miya, whose name appeared in the voters list of 1966 and 1970, cannot be said to be Hussain Ali, more particularly, when there is apparent variation of age recorded against their names, about which detailed discussions have been made in para 14(e) of the impugned judgement.

9. According to the petitioner, he lives with his elder brother Kadam Ali. He also stated that his wife's name appeared in the voters" list of 1997 and 2010 but his own name was marked as "D" voter. In the normal circumstances, the Special Family Identity Card is issued in the name of the head of the family but in the instant case, two Special Family Identity Cards are found, one in the name of the petitioner and another in the name of his projected mother Khematan Nessa. It is in such circumstances, the learned Tribunal rightly held that apart from the said documents being of recent origin but there is likelihood of obtaining the same locally. That apart, the linkage certificate which was produced is also not believable in view of the statement of DW-2 i.e. the Gaonbura who had issued the said certificate that he cannot say for certain without any official record and in absence of his personal knowledge that the petitioner was born in village Helocharpam.

10. In the above circumstances, the learned Tribunal rightly held that the petitioner could not establish his linkage with his projected parents whose name appeared in the voters list of 1965 and 1970. In absence of any plausible explanation it also cannot be accepted that Hussain Miya and Hussain Ali is one and the same person. Significantly, after 1970, the name of Hussain Ali is not found recorded in any voters list published prior to 1985.

11. The Tribunal having passed the impugned judgement and order appreciating the entire evidence on record and there being no perversity attached to the findings, this Court exercising writ jurisdiction cannot sit on appeal over such finding like an appellate authority. Further, mere inclusion and projection of names appearing in the voters list is also not a conclusive evidence of citizenship. That apart, as has been held by the Apex Court in *LIC of India v. Ram Pal Singh Bisen* reported in , 2010 (4) SCC 491 mere production of some documents or exhibiting the same without proving the contents thereof is not enough. In this connection, para 25 and 31 of the judgement is quoted below:--

"25. We are of the firm opinion that mere admission of a document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law.

31. Under the Law of Evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the Court. Contents of the document cannot be proved by merely filing in a court."

12. The scope, ambit and jurisdiction of the Writ Court in such matters have been well defined by the Full Bench of this Court in *State of Assam v. Moslem Mondal and others* reported in , 2013 (1) GLT 809. In this connection, para 112 and 113 of the said full Bench decision is reproduced below:--

"112. Article 226 of the Constitution confers on the High Court power to issue appropriate writ to any person or authority within its territorial jurisdiction. The Tribunal constituted under the 1946 Act read with the 1964 Order, as noticed above, is required to discharge the quasi-judicial function. The High Court, therefore, has the power under Article 226 of the Constitution to issue writ of certiorari quashing the decision of the Tribunal in an appropriate case. The scope of interference with the Tribunal's order, in exercise of the jurisdiction under Article 226, however, is limited. The writ of certiorari can be issued for correcting errors of jurisdiction, as and when the inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it or if such Court or Tribunal acts illegally in exercise of its undoubted jurisdiction, or when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. The certiorari jurisdiction of the writ Court being supervisory and

not appellate jurisdiction, the Court cannot review the findings of facts reached by the inferior Court or Tribunal. There is, however, an exception to the said general proposition, in as much as, the writ of certiorari can be issued and the decision of a Tribunal on a finding of fact can be interfered with, if in recording such a finding the Tribunal has acted on evidence which is legally inadmissible or has refused to admit admissible evidence or if the finding is not supported by any evidence at all, because in such cases such error would amount to an error of law apparent on the face of the record. The other errors of fact, however grave it may be, cannot be corrected by a writ court. As noticed above, the judicial review of the order passed by the inferior Court or the Tribunal, in exercise of the jurisdiction under Article 226 of the Constitution, is limited to correction of errors apparent on the face of the record, which also takes within its fold a case where a statutory authority exercising its discretionary jurisdiction did not take into consideration a relevant fact or renders its decision on wholly irrelevant factors. Hence, the failure of taking into account the relevant facts or consideration of irrelevant factors, which has a bearing on the decision of the inferior court or the Tribunal, can be a ground for interference of the Court or Tribunal's decision in exercise of the writ jurisdiction by the High Court.

113. The Apex Court in *Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd.* reported in , (2010)13 SCC 336, reiterating the grounds on which a writ of certiorari can be issued, has opined that such a writ can be issued only when there is a failure of justice and cannot be issued merely because it may be legally permissible to do so. It is obligatory on the part of the petitioners to show that a jurisdictional error has been committed by the statutory authority. There must be an error apparent on the face of the record, as the High Court acts merely in a supervisory capacity and not as the appellate authority. An error apparent on the face of the records means an error which strikes one on mere looking and does not need long drawn out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matters to show its incorrectness. Such error may include giving reasons that are bad in law or inconsistent, unintelligible or inadequate. It may also include the application of a wrong legal test to the facts found, taking irrelevant consideration into account and failing to take relevant consideration into account, and wrongful admission or exclusion of evidence as well as arriving at a conclusion without any supporting evidence. Such a writ can also be issued when there is an error in jurisdiction or authority whose order is to be reviewed has acted without jurisdiction or in excess of its jurisdiction or has failed to exercise the jurisdiction vested in him by law."

13. In view of the above, we do not find any merit in the writ petition and accordingly it is dismissed. Now, the Superintendent of Police (B), Barpeta shall ensure that the petitioner is arrested and detained in the detention camp till his deportation to his country of origin i.e. Bangladesh.

14. Let the matter be listed again after one month so as to submit report by the

Superintendent of Police (B) Barpeta about the action taken in the terms of this order.

15. The Deputy Commissioner, Barpeta shall ensure deletion of the names of the petitioner from the voter list, if any. He will also ensure that the name of the petitioner should not enter into the ongoing NRC Register.

16. Registry shall send down the case records to the learned court below along with a copy of this judgement and order. A copy of the judgement and order may also be furnished to Mr. M. Bhagabati, learned State Counsel for his immediate necessary follow up action. Copies shall also be sent to the SP(B), Barpeta and Deputy Commissioner, Barpeta, for their immediate follow up action.