
(2009) 12 GAU CK 0029
In the Gauhati High Court
Case No : Writ Petition (C) No. 4329 of 2009

Mustt. Safia Begum and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 22-12-2009

Acts Referred:

Citation : (2010) 2 GLD 140

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : A.M. Mazumdar, F.U. Barbhuiya and A. Matin, for the Appellant; S. Chakraborty, CGSC and R. Chakraborty, Addl. Sr. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The petitioners, who have been declared to be foreigners (illegal Bangladeshi migrants) have invoked the writ jurisdiction of this Court against such declaration. The impugned judgment and order dated 7.8.2009 has been passed in FT (2nd) Case No. 35/2006 by the Foreigners Tribunal (2nd), Silchar.

2. While entertaining the writ petition, an order was passed on 10.11.2009 directing that the petitioners shall not be deported from India subject, however, to the condition that they will surrender before the Superintendent of Police, Cachar, Silchar on or before 24.11.2009. It was further provided that upon such surrender, the Superintendent of Police would decide as to whether the petitioners should be detained in detention camp or in jail till a decision was arrived at in the writ petition. It was further provided that if the petitioners would furnish adequate securities to the satisfaction of the Superintendent of Police, it would be open for him to allow the petitioners to go on bail. It was also directed that the Superintendent of Police would ensure the presence of the petitioners within local limit of the jurisdictional police station until further orders from this Court. The direction was also issued to obtain photographs, fingerprints and

other physical identification of the petitioners as necessary precaution.

3. The above precautionary measures ordered having regard to the experience of this Court that after final adjudication of the writ petition upholding the orders of the Tribunal, such foreign nationals do the act of vanishing from the place and the authorities express their inability to trace them out for deportation to Bangladesh.

4. When the matter was finally heard on 1.12.2009, the learned Counsel for the petitioners submitted that in spite of advice rendered to the petitioners in terms of the aforesaid order dated 10.11.2009, they have declined to appear before the Superintendent of Police expressing apprehension that they might not be enlarged on bail. Thus, the petitioners have violated the terms of the interim order dated 10.11.2009. Accordingly, the learned State counsel was advised to make communication with the Superintendent of Police, Cachar, Silchar for apprehending the petitioners and then to keep them in jail or in detention camp. It is not known as to whether necessary steps have been taken by the police administration to apprehend the petitioners.

5. The petitioners claim that they are Indian citizen by birth. While the petitioners No. 2 to 5 are sons and daughters of Late Usman Ali, the petitioner No. 1 is his wife. Initially, the particular reference against the petitioners was started under the provisions of the then IMDT Act (since scrapped). Thereafter, the proceeding was re-registered in the Foreigner's Tribunal, Cachar, Silchar. The Tribunal after considering the materials on record has answered the reference in favour of the State and against the petitioners. Hence, this writ petition.

6. While according to the learned Counsel for the petitioners, the Tribunal failed to appreciate the evidence on record and has come to erroneous finding. The learned Counsel for the Union of India and the State of Assam, upon a reference to the records of the Tribunal, submitted that the findings of fact arrived at by the learned Tribunal, cannot be set at naught exercising writ jurisdiction. While Mr. A. Matin, learned Counsel made submission on behalf of the petitioners, Mr. S. Chakraborty, learned CGSC and Ms. R. Chakraborty, learned Addl. Sr. Govt. Advocate, Assam made submission on behalf of the Union of India and the State of Assam.

7. I have given my anxious consideration to the submissions made by the learned Counsel for the parties and the materials on record. In the written statement filed by the petitioners before the Tribunal, the plea taken was that the reference was made falsely alleging that they had entered into India after 25.3.1971. It was alleged that their father Usman Ali died in 1989 and his father was Late Rahim Mia alias Abdul Rahim Gazi and that they are permanent resident of village Lathigram under Police Station UdhARBond in the district of Cachar. The further stand of the petitioners was that their grand-father did not have any landed property and he used to reside over a plot of land belonging to wakf estate as tenant. He used to avail the right to vote as a citizen of India. In the

written statement, the photocopy of revenue receipt dated 12.10.1949 standing in the name of one Abdur Rahim Gazi was relied upon.

8. In the written statement, the further statement made was that the name of the grand-father and his two sons and one daughter were recorded in the Voter List of 1965. However, the name of their grandfather was not recorded in the said Voter List. But, subsequently, his name was also enlisted in the Voter List of 1989 along with the petitioners No. 1, 2 and 3. As regards the other petitioners, it was the stand that their names did not appear in the said Voter List, as they were minors.

9. Along with the written statement, a photocopy of an affidavit sworn by Abdur Rahim Gazi in the year 1958, when he was 65 years of age, was enclosed. In the affidavit, a declaration was made that he was a resident of village Lathigram since 1946. On the face of it, the affidavit is a forged document inasmuch as none has identified the petitioners in the said affidavit with any recitation. The LTI with the name of the petitioners and the identification allegedly made on 9.3.1958 are the subsequent insertion. The seal is also not legible. The purported signature of the Magistrate indicates the date as 29/3 (without mentioning any year) but the purported identification by an advocate (no disclosure in the name of the advocate) is dated 9.3.1958, The affidavit also does not contain the name of the Court, in which the same was sworn.

10. Another document annexed to the writ petition is the photocopy of purported Voter List of 1965 (Extract only) containing the name of one Rahim Mia, aged 60 years. Apart from the fact that this document is a photo copy with the endorsement. The seal in the document is not legible. Same is the case with the purported land revenue receipt. The photo copy of 1989 Voter List annexed to the writ petition, even if said to be contained the names of the petitioners No. 1, 2 and 3, same cannot establish their citizenship with the cut-off date i.e. 25.3.1971 and in the absence of any linkage thereby to prove the case to be pre-25.3.1971.

11. Along with the aforesaid documents, the petitioners also enclosed a photocopy of a certificate dated 2.11.2002 issued by the President, 101 No. Larsing Gaon Panchayat, Cachar certifying that Late Usman Ali, son of Late Rahim Gazi was a resident of Lathi-gram and died some 20 years ago, as per the statement of his son. The other two documents annexed are a land revenue receipt (original in the name of Abdur Rahim Gazi and the certified copy of the aforesaid Voter List of 1965 showing the name of Rahim Mia.

12. The particular reference against the petitioners was made to the then IMDT by the Superintendent of police vide his reference dated 16.3.1999. It was stated in the reference that the petitioners were the illegal migrants. Along with the reference, the relevant documents were also furnished. Ext. 1 is the report furnished by the Sub-Inspector of Police, Cachar, Silchar to the Superintendent of Police, which indicates that the petitioners are Bangladeshi nationals and entered

into India illegally after 25.3.1971. Ext. 2 is the particulars furnished by the Inquiry Officer, which is dated 27.10.1997 containing the name of Late Usman Ali and his family. Ext. 3 is the report of the Inquiry Officer detailing the particulars of the petitioners. Ext. 4 is another report furnished by the Inquiry Officer describing the petitioners as illegal migrants.

13. Before the Tribunal, the State examined 3 (three) witnesses including the I/O and the petitioners examined 2 (two) witnesses. The witnesses examined on behalf of the State duly proved the aforesaid exhibits. Ext. 4 indicates that Late Usman Ali and his wife Safiya Begum and the petitioners are Bangladeshi nationals and their address in the country of origin is village Jakiganj under police station Jakiganj in the district of Sylhet (Bangladesh).

14. While the State witnesses duly proved their case against the petitioners that they are illegal migrants having entered into India after the cut-off date i.e. 25.3.1971, let me now examine as to whether the petitioners could establish their case that they are not illegal migrants. As already noted above, the petitioners examined two witnesses. They are-DW-1 (the petitioner No. 2) and DW-2 (one M. Ali Borbhuya). DW-1 in his deposition stated that his father Late Usman Ali died when he was a child. According to him, he was born in village Lathigram under Udharbond police station. According to his disposition, his grandfather was Rahim Mia Gazi and he used to reside in a plot of land of a mosque on payment of khazana at Rs. 100/- per year. He also produced the rent receipt. On the other hand, DW-1 in his deposition stated that Late Usman Ali died few years back and that the petitioners used to reside in his land as tenant. The particular receipt produced is the revenue payment receipt dated 12.10.1949.

15. The aforesaid contradiction has been duly noted by the Tribunal inasmuch as that DW-1 in his deposition did not state that the petitioners used to reside as tenant under DW-2. The particular receipt was issued by the mosque authority in favour of Rahim Mia Gazi. But according to DW-1, they were still living at mosque land, even on the date of deposition, which is dated 22.7.2008. It is not understood as to why the petitioners placed reliance on the particular receipt of 1949.

16. It has rightly been noticed by the Tribunal that it was not the case of DW-1 that the petitioners used to reside as tenants under DW-2. The Tribunal has also noticed that in the 1965 Voter List, the name of Usman Ali did not appear. No paper has also been submitted to show that Late Usman Ali was an Indian citizen. It has rightly been noticed by the Tribunal that except one land revenue payment receipt of 1947 purportedly issued in favour of the grand-father of DW-1, no other document could be produced by the petitioners.

17. As have been observed by the Tribunal, it is not understood as to why the petitioners could not produce any recent land revenue paying receipt. It has also rightly been observed by the Tribunal that had the petitioners been the residents of mosque land, then they could have surely produced the recent land revenue

paying receipt. The particular land revenue paying receipt, according to the Tribunal, appears to be a forged one. Although it was the case of the petitioners that they were born at village Lathigram under Udharbond police station but no evidence could be led or documents produced to that effect.

18. It was on the basis of the aforesaid evidence, the petitioners wanted to establish their case of Indian citizenship, which the Tribunal has rightly disbelieved.

19. Needless to say that the Tribunal being the fact-finding authority, the findings arrived at by the said Tribunal cannot be lightly interfered with sitting on appeal over such finding and re-appreciating the evidence adduced before the Tribunal. The scope of jurisdiction in such matters is very limited. It being not a case of any perverse finding or of no evidence, the finding of fact arrived at by the Tribunal cannot be interfered with exercising writ jurisdiction.

20. For all aforesaid reasons, I do not find any merit in the writ petition. Accordingly, the writ petition is dismissed. The petitioners have already violated the terms of the interim order passed on 10.11.2009. Consequently, the Superintendent of Police, Cachar, Silchar shall ensure that the petitioners are taken into custody, if not already taken and shall detain them in jail or in the detention camp till such time they are deported to Bangladesh. The Deputy Commissioner, Cachar, Silchar shall ensure deletion of the names of the petitioners from the Voter List, if any.

21. List the matter again on 29.1.2010 for submission of compliance report by the Superintendent of Police and Deputy Commissioner, Cachar, Silchar.

22. Let copies of this judgment and order be sent to the Union of India in the Home Ministry, the Superintendent of Police and Deputy Commissioner, Cachar, Silchar immediately. Let a copy be also furnished to Ms. R. Chakraborty, learned Addl. Sr. Govt. Advocate, Assam for her necessary follow up action.

23. Registry shall send down the LCR immediately along with copy of this judgment and order.