
(2009) 01 GAU CK 0067
In the Gauhati High Court

Parul Das	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Foreigners Act, 1946 — Section 9

Citation : (2009) 5 GLR 518 : (2009) 2 GLT 74

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The petitioner, wife and husband, by filing these two independent writ petitions have challenged the orders of the Foreigners Tribunal declaring them as foreigners.

WP(C) No. 2287/2008

2. The petitioner, Smt. Parul Das, who is the wife of the petitioner in WP(C) No. 2288/2008 claims to be an Indian citizen by birth. She claims to be the daughter of one late Ramesh Chandra Das of the particular village in the district of Kamrup, Assam. According to her the name of her father was enrolled in the voter list of 1965. She was married to the petitioner in the second writ petition. However, no particulars have been furnished regarding such marriage, except the certificate dated 30.10.2006 stated to have been issued by the Gaonburha of the village certifying her marriage with Shri Gauranga Das.

3. In the writ petition, it is her case that her Indian citizenship had never been questioned, but subsequently she was illegally treated as foreigner. The reference relating to her doubtful Indian citizenship was initially registered in the Illegal migrants (Determination) Tribunal under the IMDT Act. After scrapping of the same by the Apex Court in Sarbananda Sonowal Vs. Union of India (UOI) and Another, case, the reference was transferred to the Foreigners Tribunal (2), Odalguri at Mangaldoi and the same was registered and numbered as FT Case

No. (2) 400/2006 (S.P. Enquiry No. 14,750/98).

4. Without disclosing anything in the writ petition as to what the petitioner did after receipt of notice from the Tribunal to establish her Indian citizenship for which the burden was on her u/s 9 of the Foreigners Act, 1946, she has blamed the Tribunal by making the following statements in paragraph 5 and 9.

5. That the petitioner begs to state that the hon"ble Tribunal decided the case mechanically on 12.6.2007. It may be stated here that the hon"ble Tribunal decided the case hastily. In the order of dates for recording the evidence hearing of evidence and delivery of order is shown on the same date, i.e., on 12.6.2007. The learned Member, Foreigners Tribunal (2) Darrang relied only on the report submitted earlier by the I/O and L.V.O. The petitioner was not allowed sufficient to produce her authentic documents. It never examined the voter's list (Annexure-1 above) and the certificate issued by the concerned Gaoburna and hastily declared the petitioner as foreigner vide its order dated 12.6.2007 passed in Case No. 400/2006.

9. That the petitioner submits that the d. Foreigner's Tribunal (2) Udalguri at Mangaldoi has passed the order dated 12.6.2007 in Case No. FT(2) 400/06 without considering the records of the petitioner and the Learned Tribunal relied upon the records of I.O./LV.O. The Learned Tribunal failed to consider all the facts and hastily declared the petitioner as foreigner only to satisfy the state authority. The impugned order dated 12.6.2007 is bias and as such the same is liable to be set aside and quashed.

5. As usual and as has been experienced by this Court, in this case also the impugned order of the Tribunal is ex parte due to the absence of the petitioner in spite of receipt of notice. In paragraph 10 of the writ petition, it has been stated that she could not appear before the Tribunal because of her mother-in-law's illness, for which she had to go to Coochbehar alongwith her husband.

6. I have heard Ms. J. Paul, learned Counsel for the petitioner as well as Ms. R. Chakraborty, learned Additional Senior Government Advocate, Assam. I have also heard Ms. B. Das, learned CGSC. I have also gone through the records of the Tribunal.

7. From the records, it appears that the reference was made by the Superintendent of Police, Darrang, Mangaldoi, when the case was detected on intensive revision of electoral roll pertaining to the particular constituency (No. 64 Paneri). The draft electoral roll was published on 26.6.1997 in which the name of the petitioner as per her declaration was included. A doubt having arisen regarding her Indian citizenship, the matter was forwarded to the SP, Darrang on the basis of the report etc. Thereafter, the SP, Darrang made a reference to the IMDT. As per the materials on record, the date of birth of the petitioner is 15.1.1967 and if that be so her age on the date of filing the writ petition was 41 years as against the declared age in the affidavit, which is 35.

8. Due notice was served on the petitioner by the electoral registration office informing the petitioner about the reference to the IMDT. Due notice was also served from the Tribunal. The petitioner appeared before the Tribunal on 1.11.2006 and she was granted time to file written statement and document fixing the next date as 27.11.2006. The petitioner again appeared before the Tribunal on 27.11.2006 but without any W.S. and/or documents. She was again granted time fixing the case on 7.12.2000, on which date although the petitioner did not appear personally, but her husband appeared by filing an adjournment petition on the ground of her illness. Prayer for adjournment was granted fixing the matter on 3.1.2007 for W.S. and documents as a last chance. Thereafter, in none of the dates fixed, the petitioner appeared before the Tribunal, which naturally resulted in the impugned ex-parte judgment and order dated 12.6.2007. The dates on which the petitioner remained absent without any steps are 3.1.2007, 5.2.2007, 8.3.2007, 7.4.2007, 10.5.2007 and 12.6.2007 and now in the writ petition, the blame is on the Tribunal.

9. In the proceeding before the Tribunal, the petitioner did not submit any W.S. and/or documents. On the other hand, the prosecution examined the particular officers, who furnished the reports against the petitioner. The reports were proved by them, which was prepared on the basis of the enquiry made, in which it was found that the petitioner is not an Indian citizen. Accordingly, the Tribunal has answered the reference in the affirmative. As stated above and as emphasized by the Apex Court in *Sarbananda Sonowal (I)* (supra), the strict burden of proving the Indian citizenship was with the petitioner u/s 9 of the Foreigners Act, 1946.

10. The petitioner has made false statement in the writ petition (Refer paragraph 5 and 9 quoted above). It is absolutely a false statement to say that the petitioner was not allowed sufficient time to produce her authentic documents and that the Tribunal did not examine the Annexure-1 voter list of 1965. It is also absolutely false to say that the tribunal passed the impugned order without considering the records of the petitioner. The petitioner after the initial response, decided to remain absent on the dates fixed by the Tribunal and now coming to the writ court has made false statements on which ground alone the writ petition is liable to be dismissed.

11. Even leaving aside the aforesaid factual aspects of the matter, let us see, what is the case of the petitioner in the writ petition. According to the petitioner, her parents are Ramesh Chandra Das and Ananta Bala Das and that their names appeared in the voter list of 1965 (Annexure-1). Annexure-2 is the certificate dated 30.10.2006 certifying her to have been married to Sri Gauranga Das. These are the only two documents, which the petitioners have projected to prove her Indian citizenship. Even if it is believed that Ramesh Chandra Das, whose name appeared in Annexure-1 voter list, authenticity of which is also doubtful, there is no explanation as to why her parents' name did not appear in any of the voter lists prior to and after 1965. Needless to say that photocopy and that too

incomplete, of a document is not admissible in evidence, more particularly, when the burden of proof lies on the person concerned u/s 9 of the Foreigners Act.

12. Annexure-2 certificate dated 30.10.2006 is also only a photocopy purportedly issued by the Gaonburha of the particular village. Even if this document is taken on its face value, same does not prove the Indian citizenship of the petitioner, which she claims by birth.

13. The petitioner has furnished reason for her non-appearance before the Tribunal by stating that her mother-in-law was ill, for which she had to go to Coochbehar in West Bengal. No particulars have been disclosed as to when she went to Coochbehar and came back from there. Annexure-4 is again a photocopy of a medical document dated 16.8.2007, which date does not have any relation to the dates fixed by the Tribunal, when the petitioner remained absent and avoided the proceeding before the Tribunal.

14. Even if the age declared by the petitioner, which is 35 years is accepted, there is no explanation as to why her name does not find mention in any of the voter list. It was only in 1997 her name was included in the draft voter list. A doubt having arisen regarding her Indian citizenship, the aforesaid reference was made, which she could not defend in spite of getting adequate opportunities. Even in the writ petition, there is no evidence to establish her Indian citizenship, which she claims to be by birth.

15. For all the aforesaid reasons I do not find any merit in the writ petition and consequently while upholding the impugned order dated 12.6.2006 passed by the Foreigners Tribunal, Mangaldoi in FT(2) Case No. 400/2006 (S.P. Enquiry No. 14,750), the writ petition is dismissed.

WP(C) No. 2288/2008

16. The writ petitioner is the husband of the petitioner in the first writ petition, i.e., WP(C) No. 2287/2008. He also claims to be an Indian citizen by birth. He has named his father as Late Jiban Ch. Das originally hailing from Coochbehar, West Bengal. Earlier, the IMDT, Darrang had answered the reference in his (Jiban Ch. Das) favour primarily on the basis of an affidavit sworn by his father. The petitioner has annexed the photocopy of the order dated 4.1.1999 passed by the IMDT, Darrang, in FT(2) Case No. 28/1991 purportedly relating to his father. The petitioner has also placed reliance on the same very photocopy of the medical document about which mention has been made in the first writ petition. Except these two documents, the petitioner has not placed reliance on any other documents to prove his Indian citizenship by birth. This being the position, there is no material to declare the petitioner as an Indian citizen.

17. In this case also Ms. J. Paul, learned Counsel argued on behalf of the petitioner and Ms. R. Chakraborty as well as Ms. B. Das, learned state counsel and CGSC argued on behalf of the respondents. I have gone through the records of the Tribunal. As in the first writ petition, in this case also the Tribunal has

answered the reference against the petitioner ex parte as the petitioner did not appear before the Tribunal. As in the first writ petition, in this writ petition also the blame is on the Tribunal with the following statements in paragraphs 6 and 10.

6. That it is respectfully submitted that the hon''ble court decided the case mechanically on 12.6.2007. It may be stated here that the Hon''ble Tribunal decided the case hastily. In the order the dates for recording the evidence, hearing of evidence and delivery of order is shown on the time date i.e., on 12.6.2007. The learned Member, Foreigners Tribunal (2) Darrang relied only on the report submitted earlier by the I/O and L.V.O. The petitioner was not allowed sufficient to produce her authentic documents and never examined the relevant documents and record and the order passed by the Learned Member, Foreigner''s Tribunal on 4.1.1999 declaring the petitioner''s father as Indian and not an illegal migrant and as a son of Indian parents he automatically becomes citizen of India.

10. That it is respectfully submitted that the d. Foreigners Tribunal (2) Udalguri at Mangaldoi has passed the order dated 12.6.2007 in Case No. FT(2)480/2006 without considering the records of the petitioner and the Learned Tribunal relied much in the records of LO/L.V.O. The Learned Tribunal failed to consider all the facts and hastily declared the petitioner as foreigner only to satisfy the state authority. The impugned order dated 12.6.2007 is bias and as such the same is liable to be set aside and quashed.

18. In this case also, the reference was made by the police on the basis of the doubt, which had arisen upon inclusion of his name in the draft electoral roll. The reference was made to the Tribunal on the basis of the report etc. furnished against the petitioner. Due notice was served on him both by the electoral registration office as well as the Tribunal. The petitioner in spite of receipt of notice preferred to remain absent on 20.11.2006. However, he appeared on the next date which was 2.12.2006, but did not file any written statement and/or documents. Thereafter on all the dates fixed, which are 3.1.2007, 5.2.2007, 8.3.2007, 7.4.2007, 9.4.2007, 10.5.2007 and 12.6.2007, the petitioner remained absent in the Tribunal. Due to such absence without any steps, the Tribunal had no option than to proceed ex parte. The prosecution duly established its case by examining two witnesses, who conducted the Enquiry in which it was established that the petitioner is a foreigner.

19. From the above, it will be seen that like that of his wife, the petitioner has also made false statement in the writ petition so as to claim that he was not given sufficient time to produce authentic documents and that the Tribunal did not consider the relevant records. Because of such false statements made in the writ petition, same is liable to be dismissed on that score alone.

20. As in the first writ petition, what is the case of the petitioner in the instant writ petition? As noticed above, the petitioner has not furnished any material to prove his Indian citizenship by birth, but on the other hand has put blame on the

Tribunal. The particular order of the Tribunal, on which the petitioner has placed reliance relates to one Shri Jiban Ch. Das, son of Late Amar Ch. Das. Even it is believed that late Jiban Ch. Das was the father of the petitioner, same by itself cannot establish Indian citizenship of the petitioner by birth, unless, it is proved to be so by none other than the petitioner himself. It is also not very uncommon that after the partition of India and creation of Bangladesh, part of the family remained in Bangladesh and the other part migrated and/or infiltrated to India. With that link, a Bangladeshi citizen cannot claim Indian citizenship by migrating and/or infiltrating to India after the cut-off date, which is 25.3.1971.

21. As per the declared age of the petitioner in the affidavit, at the time of filing the writ petition he was 38 years but as per the records of the Tribunal, his age is 46 years, his date of birth being 21.3.1962. Whether it is 46 years or 38 years, if the petitioner is an Indian citizen by birth, his name would, have found mention at least in one voter list, if not in many. It was only in 1997, when he tried to enter his name in the voter list, same was noticed as a doubtful case and the reference was made to the Tribunal on the basis of the reports furnished against the petitioner. As to what transpired in the Tribunal has been noticed above.

22. For all the aforesaid reasons, this writ petition also merits dismissal, which I accordingly do upholding the impugned judgment and order dated 12.6.2007 passed by the Foreigners Tribunal (2), Darrang in FT (2) Case No. 481/2006 (SP Enquiry No. 14,749 whereby the petitioner has been declared as foreigner. Writ petition is dismissed.

DIRECTION

23. Both the writ petitions having been dismissed upholding the impugned orders of the Tribunal, the S.P., Udalguri is directed to take both the petitioners i.e., Smt. Parul Das and her husband Sri Gauranga Das into custody and to detain them till such time they are deported to Bangladesh. Let compliance report be furnished by the S.P., Udalguri on or before 28th February, 2009. The matter shall be listed in the 1st week of March, 2009.

24. Bring this judgment and order to the notice of the Deputy Registrar (J). Let copies of this judgment and order be furnished immediately to Ms. R. Chakraborty, Additional Senior Government Advocate, Assam as well as Ms. B. Das, learned CGSC for the appraisal of the authority. In addition, copy may also be sent to the Superintendent of Police, Udalguri.