

(2021) 11 GAU CK 0042
In the Gauhati High Court

Case No : Writ Petition (Civil) No. 8295 Of 2019

Rajendra Das

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 24-11-2021

Acts Referred:

Citation : (2021) 11 GAU CK 0042

Hon'ble Judges : N. Kotiswar Singh, J; Malasri Nandi, J

Bench : Division Bench

Advocate : Swati B. Baruah, P.S. Lahkar, A. Verma

Final Decision : Disposed Of

Judgement

1. Heard Ms. Swati Bidhan Baruah, learned amicus curiae appearing for the petitioners. Also heard Mr. P.S. Lahkar, learned counsel assisting Mr. R.K. Dev Choudhury, learned Asstt. Solicitor General of India for the respondent No.1 as well as on behalf of the NRC, respondent No.5 and Ms. A. Verma, learned special counsel, FT, appearing for respondent Nos.2, 3 and 4.

2. Considering the nature of this case, the matter is taken up for disposal at this stage without issuing any formal notice to the respondents.

3. The present petition has been filed challenging the order dated 26.04.2018 passed by the learned Member, Foreigners Tribunal-4th, Cachar, Silchar, Assam, in Misc. Case No.07/2018 upholding decision of the learned Tribunal dated 18.01.2018 passed in F.T.4th Case No.327/2017 by which the petitioner No.1 and his family members were declared foreigners of post 25.03.1971 stream.

4. It appears that the petitioners were proceeded before the Foreigners' Tribunal-4th, Cachar, Silchar, in F.T.4th Case No.327/2017 and an ex-parte order was passed on 18.01.2018 against the petitioners, as the petitioners failed to appear before the learned Tribunal after being served notice and also did not file written statement after seeking time. Subsequently, the petitioner No.1

approached the Tribunal by filing the Misc. Case No.07/2018 for setting aside the said ex-parte opinion dated 18.01.2018, which however, was rejected by the learned Tribunal on 26.04.2018 on the ground that no sufficient cause was shown by the petitioner for setting aside the ex-parte order and also it was observed on the strength of the decision rendered by this Court in Rukia Begum Vs. Union of India & Ors. 2015 (4) GLT 882, that application to set aside ex-parte opinion should not be entertained in a routine manner.

5. In this regard, learned counsel for the petitioners has drawn attention of certain documents, namely, the voters' list of 1965, in which the names of one Gandhi Lal Das and Sumurta Bala Das are shown, who the petitioner No.1 claims to be his parents. Similarly, the petitioners have also annexed one photocopy of the voters' list of 1970, where the aforesaid names of the parents of petitioner No.1 are shown. The petitioners have also referred to a certificate issued by the Mahadevpur Gaon Panchayat, which shows that the petitioner No.2 is married to the petitioner No.1 and as such the petitioners submit that there are sufficient materials to show that they are Indians and not foreigners.

6. We are also of the view that if the petitioners are able to prove the aforesaid documents, they may have a legitimate claim that they are Indians and not foreigners.

7. This Court has reiterated the importance of citizenship 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. 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.

8. Thus, proceeding before a Tribunal, though is a summary one, has huge implications for the right of a person. The Full Bench of this Court in State of Assam & Ors. Vs. Moslem Mondal & Ors. 2013 (1) GLT 809 has also emphasized that citizenship has to be jealously guarded.

9. Learned counsel for the petitioners submits that the petitioner No.1 because of his ill health could not appear before the Tribunal resulting in passing of the ex-parte order as mentioned in paragraph 4 of this petition. It has been also submitted that the petitioner No.2 is the wife of the petitioner No.1 and the other remaining petitioner Nos.3, 4 and 5 are minor children of the petitioner Nos.1 and 2 and as such, because of the inability of the petitioner No.1 to appear before the Tribunal the aforesaid ex-parte order had been passed against all of them. Though we are also conscious of the fact that ex-parte orders cannot be interfered in a routine manner. However, in the present case, the matter pertains to a very important right of a person i.e. citizenship. If the petitioner No.1 could not appear before the learned Tribunal and ex-parte order was passed it would have a cascading affect on other members of his family i.e. his wife and minor children, as the rest of the family members are dependent on the petitioner No.1.

10. Accordingly, considering the nature of the case, we are of the view that the petitioners may be offered another opportunity to appear before the learned Tribunal to prove that they are Indians and not foreigners.

11. Under the circumstances, we allow this petition by setting aside the impugned order dated 26.04.2018 passed in Misc. Case No.07/2018 as well as the order dated 18.01.2018 passed in F.T.4th Case No.327/2017 and direct the petitioners to appear before the learned Tribunal on or before 24.12.2021 and file their written statement and adduce evidence in support of their claim that they are Indians. The learned Tribunal after hearing the parties will pass appropriate order in accordance with law.

12. It is also made clear that if the petitioners are not able to engage any counsel on their own and of their choice, the petitioners may approach the Cachar District Legal Services Authority for providing a legal aid counsel.

13. However, since citizenship of the petitioners has come under cloud, they will remain on bail during the proceedings for which they will appear before the Superintendent of Police (B), Cachar within 15(fifteen) days from today by furnishing a bail bond of ` 5,000/- each with one local surety of the like amount to the satisfaction of the said authority. The concerned Superintendent of Police (B) shall also take necessary steps for capturing the fingerprints and biometrics of the iris of the petitioners. It is also made clear that the petitioners shall not leave the jurisdiction of the Cachar district without obtaining permission from the Superintendent of Police (B), Cachar.

14. With the above observations and directions, the petition stands disposed of.

15. Before parting, we place on record our appreciation to the service rendered by Ms. Swati Bidhan Baruah, learned amicus curiae, who shall be paid the professional fee as per entitlement, by the Gauhati High Court Legal Aid Committee.