
(2015) 07 GAU CK 0037

In the Gauhati High Court

Case No : W.P. (C) No. 2678 of 2013 & W.P.(C) No. 2678 of 2013

Rukia Begum

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Foreigners Act, 1946 — Section 9

Citation : (2015) 2 GLD 573

Hon'ble Judges : Biplab Kumar Sharma, J.

Bench : Single Bench

Advocate : S.C. Keyal, ASGI, for the Appellant; B.J. Ghosh, GA, for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—This writ petition was filed on 7.5.2013 challenging the ex-parte order dated 16.1.2010 of the Foreigners Tribunal (2nd) Barpeta in FT (2nd Tribunal) Case No. 302/2006, Union of India v. Rukia Begum. Thus, the writ petition was filed after more than three years and no explanation has been furnished as to the cause of delay. The Tribunal had to pass the impugned order ex-parte, when the petitioner failed to discharge her burden of proof as envisaged under Section 9 of the Foreigners Act, 1946 by adducing evidence. After filing of the written statement, she remained absent throughout the proceeding as will be evident from the impugned judgment dated 1.6.2010 and also on perusal of the records received from the Tribunal.

2. The reference against the petitioner was initiated way back in 1997. When there was intensive revision of electoral roll as per the order of the Election Commission of India, it was suspected that the name of the petitioner was wrongly included in the draft electoral roll published on 24.7.1997 pertaining to 47 Chenga Assembly Constituency, accordingly an enquiry was conducted by the verification officer and on completion of the same, he submitted his report that during enquiry the petitioner failed to produce any valid document to prove her

Indian citizenship.

3. It was on the basis of the above, reference was made to the Foreigners Tribunal to render opinion as to whether the petitioner is an illegal migrant or not. As the records of the Tribunal would reveal, the proceeding against the petitioner started with the issuance of notice on 6.9.2003. In spite of service of notice, when the petitioner did not respond to the proceeding, fresh notice was issued to her on 20.11.2004. As recorded in the order dated 6.1.2005, the petitioner did not appear before the Tribunal in spite of service of notice on the next date fixed i.e. 15.2.2005. On 7.4.2005, 25.5.2005 and 1.7.2008 also she remained absent. Thereafter in view of scrapping up of IM(D)T Act, 1983 in *Sarbananda Sonowal Vs. Union of India (UOI)* and Another, , fresh proceeding started against the petitioner by way of issuance of notice. The notice was duly served on her as will be evident from the order passed on 6.12.2006, on which date, she appeared and prayed for time. Thereafter also she kept on taking time as will be evident from the orders passed on 26.12.2006, 7.2.2007, 27.2.2007, 21.3.2007, 24.4.2007 etc.

4. On 24.5.2007 the petitioner submitted written statement, but remained absent on the subsequent date i.e. 4.7.2007. Thereafter also with the exception of 3.8.2007, 7.9.2007 and 3.10.2007 she remained absent on all the dates fixed. Such dates are 30.10.2007, 16.11.2007, 5.12.2007, 7.1.2008, 12.2.2008, 6.3.2008, 4.4.2008, 2.5.2008, 31.5.2008, 4.7.2008, 20.8.2008, 9.9.2008, 3.10.2008, 24.10.2008, 28.11.2008, 1.1.2009, 30.1.2009, 3.3.2009, 7.4.2009, 20.5.2009, 1.7.2009, 13.8.2009, 6.10.2009, 17.11.2009, 4.1.2010 and finally on 16.1.2010, when the Tribunal passed the impugned judgment.

5. From the above, there is absolutely no manner of doubt that the petitioner was given ample opportunities to prove her Indian citizenship and for that matter to discharge her burden of proof as envisaged under Section 9 of the Foreigners Act, 1946, but she did not avail the same.

6. The ground for setting aside the impugned ex-parte order, the petitioner has urged in the writ petition are that--

(i) She is entitled to get another opportunity to prove her Indian citizenship.

(ii) Mere failure to contest the reference cannot be fatal.

(iii) She failed to adduce evidence due to her ignorance and that there was communication gap and improper legal guidance.

7. Mr. A.R. Sikdar, learned counsel for the petitioner submits that the engaged counsel of the petitioner did not guide properly and in fact the petitioner was told that she was not required to appear in the subsequent dates. Although he has referred to the statement made in paragraph-3 of the writ petition, but there is no averment as to when the petitioner was told by her engaged counsel and to be precise on which date that she was told that she was not required to appear in all subsequent dates.

8. Contrary to the aforesaid stand in paragraph-3 of the writ petition, in the additional affidavit filed by the petitioner, she has stated (refer paragraph-2) that the engaged counsel of the petitioner although submitted written statement, but the petitioner was never told that she was required to adduce evidence. Be that as it may, such a ground towards setting aside the ex-parte order is not admissible, more particularly, when the proceeding involved is summary proceeding concerning a suspected foreigner. If this kind of plea is allowed, there will be no end to such references. It is the experience of this Court that this is a common ground urged by declared foreigners and coming to the Writ Court, they blame their engaged counsel alleging improper guidance.

9. Although in the Foreigners Act, 1946 and the Foreigner Tribunals Order, 1964, there is no provision for setting aside ex-parte order, but the Full Bench of this Court in the case of State of Assam v. Moslem Mondal, reported in 2013 (1) GLT (FB) 809 while holding that the Tribunal has jurisdiction to entertain and pass necessary order on an application for setting aside an ex-parte opinion, but at the same time it has also been held rather cautioned that such application must not be entertain in a routine manner, otherwise the very purpose of enacting the 1946 Act and the 1964 Order would be frustrated. For a ready reference, paragraph-92 of the said judgment is reproduced below:

"92. As discussed above, the Tribunals constituted under the Foreigners Act read with the 1964 Order have to regulate their own procedure and they have also the quasi-judicial function to discharge and hence in a given case the Tribunal has jurisdiction to entertain and pass necessary order on an application to set aside an ex-parte opinion, provided it is proved to the satisfaction of the Tribunal that the proceedee was not served with the notice in the reference proceeding or that he was prevented by sufficient cause from appearing in the proceeding, reason for which was beyond his control. Such application, however, should not be entertained in a routine manner. The Tribunal can entertain such application provided the proceedee could demonstrate the existence of the special/ exceptional circumstances to entertain the same by way of pleadings in the application filed for setting aside the ex-parte opinion, otherwise the very purpose of enacting the 1946 Act and the 1964 Order would be frustrated. The Tribunal, therefore, would have the jurisdiction to reject such application at the threshold, if no ground is made out."

10. Above being the position and in absence of any cogent and sufficient ground to set aside the impugned ex-parte order, coupled with the un-explained delay in filing the writ petition, which is more than three years, the writ petition merits dismissal, which I accordingly do.

11. Registry may transmit the case records to the Tribunal.

12. The Superintendent of Police (13), Barpeta and the Deputy Commissioner, Barpeta are directed to take appropriate action in the matter towards deportation of the petitioner from India and deletion of her name from the voter lists. She

shall be immediately taken into custody and kept in detention camp, of not already done.

13. Let copies of this judgment and order be furnished to the Superintendent of Police (B), Barpeta and the Deputy Commissioner, Barpeta. Another copy be sent to the Union of India in the Ministry of Home. An extra copy of this judgment and order may also be furnished to Mr. S.C. Keyal, learned ASGI for his necessary follow up action. List after one month for furnishing reports by the Superintendent of Police (B), Barpeta and the Deputy Commissioner, Barpeta.