
(2015) 07 GAU CK 0040
In the Gauhati High Court
Case No : WP(C) No. 2449 of 2014

Saha Ali	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Foreigners Act, 1946 — Section 2(a), 9

Citation : (2015) 2 GLD 575 : (2015) 4 GLT 546

Hon'ble Judges : Biplab Kumar Sharma, J.

Bench : Single Bench

Advocate : R. Ali, Advocate, for the Appellant; Y. Doloi, C.G.C. and Noor Mohammad, G.A., for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—By means of this writ petition, the petitioner has challenged the order dated 06.02.2014 of the Foreigners Tribunal (IInd) Barpeta passed in FT (IInd) Tribunal Case No. 1118/11 (Union of India Vs. Sah Ali). By the said judgment, the petitioner has been declared to be a foreigners within the meaning of Section 2(a) of the Foreigners Act, 1946, who entered into India after the cutoff date i.e. 25.03.1971. In the counter affidavit filed by the Superintendent of Police (B), Barpeta filed on 10.06.2014, it has been stated thus:-

"6. That as regards to the statements made in paragraph 11 of the writ petition, the deponent begs to state that on receipt of the judgment and order dtd. 06.02.2014 in FT Case No. 1118/2011 police made attempt to apprehend the petitioner but found not available in his locality. He is avoiding police arrest till date."

2. It will be pertinent to mention here that although the writ petition was entertained by order dated 16.05.2014, no interim order was passed suspending the impugned judgment and/or directing the respondents not to apprehend the

petitioner, a declared foreigner.

3. The aforesaid stand of the Superintendent of Police (B) Barpeta in the affidavit filed on 10.06.2014 has not been denied by the petitioner filing any affidavit-in-reply. This aspect of the matter will have a bearing having regard to the fact that in the recently published list on declared foreigners who have done the act of vanishing, there are altogether 2832 such declared foreigners. The list has been published in the recently published issues of The Sentinel by the Additional Director General of Police (B) and the list pertain to Sivasagar district (Refer issue dated 14.07.2015). If this is the situation in respect of the declared foreigners and the State Administration is not in a position to apprehend them, as to what is in store for the indigenous people of Assam can well be imagined.

4. Coming to the case in hand, it is the projection made by the petitioner that his father is known as Mamo Dewani and so also as Jasimuddin. On the other hand, the documents which the petitioner has placed reliance including the voter list of 1965 and 1970, apart from reflection of the name of one Mamo Dewani, there is reflection of one Jasimuddin also, interestingly, in the voter list of 1970, Mamo Dewani was shown separately and so also Jasimuddin. Had it been a case of Mamo Dewani and Jasim Uddin being one and the same person, their names would not have been shown separately under different columns. This aspect of the matter has been discussed by the Tribunal in its impugned order dated 06.02.2014.

5. Above apart, in the voter list of 1989 containing the name of the petitioner, his father is shown as Jasimuddin. Thus, it is the convenience of the petitioner to identify his father either as Mamo Dewani or Jasimuddin according to the demand of the situation. For a ready reference, the relevant portion of the impugned judgment is quoted below:-

"Now, let me consider the voter list of 1970 (Ext. B) which has been submitted by the O.P./2nd party Sah Ali.

In the voter list of 1970 (Ext. B) for 47 No. Sarbhog L.A.C. vill-Garaiguri in house No. 60, the name of Mamo Dewani has been shown in serial Nos. 190, 191, 192 and 193. In the same voter list of 1970 (Ext. B) in serial No. 226, the name of Jasimuddin has also been shown as another person. Perusal of the voter list of 1970 (Ext. B), it appears that the persons namely Jasimuddin and Mamo Dewani are shown individually as two separate persons.

Under the evidence Act, contents of the documents are required to be proved either by the primary and secondary evidence.

Sec. 9 of the Foreigners" Act 1946 casts the burden upon the O.P/2nd party or alleged person to establish his or her Indian citizenship.

But here in this case in hand, O.P./2nd party Sah Ali has failed to show any reasonable cause in his evidence as to why the names of Jasimuddin and Mamo Dewani were shown as separate two individual persons in the voter list of 1970

(Ext. B).

It appears that the O.P./2nd-party Sah Ali made a false statement regarding the name of his father."

6. The petitioner has placed reliance on an affidavit allegedly sworn in by his brother Md. Suleman on 27.07.1993 (Annexure-5) so as to contend that Jasimuddin and Mamo Dewani is one and the same person. I am afraid, on the basis of such an affidavit, there cannot be projection of two names contending that both the persons and for that matter names are that of one and the same person. While the petitioner has placed reliance on the said purported affidavit, but there is no explanation as against the name of Mamo Dewani appearing in the voter list of 1969 and 1970, the petitioner's father is shown as Jasimuddin in the voter list of 1989 containing the name of the petitioner. The petitioner also did not take the plea before the learned Tribunal that Jasimuddin and Mamo Dewani is one and the same person.

7. The Tribunal having answered the reference in appreciation of the evidence on record, this Court cannot sit on appeal over such decision exercising writ jurisdiction. The scope, ambit and jurisdiction of the writ Court in such matter has been discussed in the Full Bench decision in Moslem Mondal (Supra) as follows:-

"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 and Others Vs. Modern Co-operative Group Housing Society Ltd. and Others*, , 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."

8. For all the aforesaid reasons I do not find any merit in the writ petition and accordingly it is dismissed.

9. Consequent upon dismissal of the writ petition, 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. The Deputy Commissioner, Barpeta shall ensure deletion of the name of the petitioner from the voter list, if any.

10. 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. Registry shall send down the case records to the learned court below along with a copy of this judgment and order. A copy of the judgment and order may also be furnished to Mr. Noor Mohammad, learned State Counsel as well as Mr. Y. Doloi, learned CGC, for their 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.