

(2011) 05 GAU CK 0060
In the Gauhati High Court
Case No : Writ Petition (C) No. 1959 of 2011

Sahabul Hussain	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Citation : (2011) 4 GLT 100

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : D.P. Chaliha and M. Rana, for the Appellant; R. Chakraborty, Sr. G.A. and M. Bhagabati, CGC, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—Heard Mr. D.P. Chaliha, learned Senior Counsel assisted by Mr. M. Rana, learned Counsel for the Petitioner. I have also heard Ms. R. Chakraborty, learned Addl. Senior Govt. Advocate as well as Mr. M. Bhagabati, learned CGC.

2. This writ petition has been filed against the order dated 4.10.2010 passed by the learned Member, Foreigner's Tribunal, Goalpara in FT Case No. 197/G/2006 (Union of India v. Sahabul Islam), by which it has been held that the person concerned i.e. Sahabul Islam is an illegal migrant and accordingly liable to be deported from India.

3. The instant writ petition has been filed by one Shri Sahabul Hussain, although the proceeding before the Tribunal in respect of the aforesaid reference was against one Shri Sahabul Islam. This Court while entertaining the writ petition by order dated 4.4.2011 called for the records of the Tribunal and the same is available for perusal.

4. In the proceeding before the Tribunal, the person proceeded against was Sahabul Islam. In the notice served from the Tribunal also, the Petitioner acknowledged the same by his clear signature as Sahabul Islam. In the writ

petition, he claims that he is Sahabul Hussain and one of the supporting documents mentions one Sahabul Ahmed.

5. The Petitioner has placed reliance on the voter list of 1989 in which name of one Shri Sahabul Hussain appears. The Petitioner has also placed reliance on the voter list of 1997 where the name of one Sahabul Ahmed appears. Above are the two documents i.e. the voter lists of 1989 and 1997 depicting the names of Sahabul Hussain and Sahabul Ahmed, the Petitioner claims that he is an Indian citizen.

6. I have perused the entire records of the Tribunal. The Petitioner was first served with notice as recorded in order dated 30.10.2008. He remained absent thereafter on 15.12.2008, 19.2.2009 and 13.4.2009. The Tribunal thereafter issued fresh notice to the Petitioner fixing the matter on 13.5.2009. On 13.5.2009 notice was not served and thereafter notice was again issued on 4.9.2009. On the Petitioner's engaged counsel appeared and filed petition seeking adjournment to file Written Statement and affidavit. Accordingly, the prayer was allowed fixing the matter on 23.10.2009.

7. The order sheet reveals that the Petitioner merrily kept on taking time by filling adjournment petitions enabling him to file Written Statement and affidavit. The dates on which such prayer was made are 23.10.2009, 15.12.2009, 27.1.2010, 4.3.2010, 29.5.2010 and 21.7.2010. On 21.7.2010, the Tribunal made it clear in its order that there would be no further chance for filling Written Statement.

8. On 31.8.2010 i.e. the next date fixed, the Petitioner again remained absent and filed petition for adjournment enabling him to file Written Statement. Although, as per the earlier order dated 21.7.2010, the Petitioner was not entitled to any further adjournment but the learned Tribunal granted him another chance fixing the matter on 13.9.2010. On 13.9.2010 also, the Petitioner repeated the same story by filing an application seeking adjournment. Situated thus, the engaged counsel had no other option than to withdraw from the case. Thereafter the Tribunal passed the impugned judgment and order dated 4.10.2010 with the clear declaration that the Petitioner is an illegal Bangladeshi migrant and liable to be deported from Assam.

9. In the impugned judgment and order, the aforesaid aspect of the matter has been elaborately discussed. As per the provisions of the Foreigner's Act, the burden lies on the foreigner to establish that he is an Indian citizen. In the instant case, inspite of granting several opportunities, the Petitioner did not discharge the said burden and now has approached this Court by filling the instant writ petition towards assailing the impugned judgment and order with the aforementioned contradictory documents.

10. In the writ petition, there is no explanation as to why the Petitioner all along remained absent in all the dates fixed by the Tribunal. Only ground urged is that the Petitioner was endeavouring to obtain documents. In this connection, he has

enclosed Annexure C/2 dated 17.12.2009 so as to contend that the documents were sought for from the authority by filling the application and Annexure-C/2 is the token of receipt of the said application on 17.12.2009. On perusal of Annexure-C/2 document, it is seen that the name of the applicant is one Nazir Uddin Ahmed and not the Petitioner. The purpose for which the application was filed was indicated as "Certified copy of electoral roll", however, which electoral roll was prayed for, there was no indication.

11. merely showing the aforesaid receipt dated 17.12.2009, the Petitioner cannot explain his non-appearance in the proceedings before the Tribunal.

12. As has been observed in the impugned judgment and order, based on the report of Electoral Registration Officer of 36, Dubhnoi ST LAC and the report of the local Verification Officer and the orders passed thereon, the Chairman of the Screening Committee i.e. the Superintendent of Police (B) had forwarded the reference to the Tribunal and the Tribunal answered the said reference by the impugned judgment and order. There was no denial of the said documents by the Petitioner.

13. Above being the conduct of the Petitioner and because of what has been stated above, I have no hesitation to hold that the Petitioner is an illegal Bangladeshi migrant leaving in Assam without any valid document and thus liable to be deported to Bangladesh.

14. In terms of the order passed on 4.4.2011, the Petitioner was to surrender before the Superintendent of Police, Goalpara and thereafter he was to be detained in the detention camp. Mr. Chaliha, learned Counsel appearing for the Petitioner submits that in terms of the said order, the Petitioner upon his surrender before the S.P, Goalpara, has been detained in the detention camp.

15. In view of the above, the writ petition is dismissed. The Superintendent of Police (B), Goalpara shall ensure deportation of the Petitioner to Bangladesh. Simultaneously the Deputy Commissioner, Goalpara, shall also ensure deletion of the name of the Petitioner from the voter lists. Appropriate action in this regard shall be taken forthwith and compliance report be submitted on or before 06.06.2011.

16. Let a copy of this judgment and order be furnished to Ms. R. Chakraborty, learned State Counsel. Copies of the judgment and order shall also be sent to Superintendent of Police(B) and the Deputy Commissioner, Goalpara, for their necessary follow up action. Another copy of this order be sent to the Union Government in the Home Department, for appraisal.

17. There is no order as to costs.