
(2015) 07 GAU CK 0018
In the Gauhati High Court
Case No : WP (C) No. 2842 of 2015

Sahid Ali	Vs	APPELLANT
The Union of India and Others		RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

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

Citation : (2015) 2 GLD 568 : (2015) 4 GLT 504

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : S.S.S. Rahman. Advocate, for the Appellant; G. Sarma, Advocate for S.C. Keyal, ASGI and Noor Mohammad, GA, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J—The petitioner is aggrieved by the judgement and order dated 14/05/2012 of the Foreigners Tribunal, Golaghat passed in case No. FTG 10/2007 corresponding to IM(D)T Police Case No. 240/2001 (State v. Sahid Ali). By the said order passed ex-parte, the petitioner has been declared to be a foreigner as per the provisions of Section 2(a) of the Foreigners Act, 1946.

2. As will be evident from the impugned judgement itself, the petitioner remained absent in the proceeding before the Tribunal on as many as 14 (fourteen) occasions. To quell any doubt, I have also verified the records received from the Tribunal and on perusal of the same it is found that after the initial appearance on 14/06/2007 before the Tribunal, the petitioner remained absent till 29/05/2009. Accordingly, the Tribunal issued fresh notice on 18/06/2009. On receipt of the said second notice, the wife of the petitioner appeared before the Tribunal on 10/09/2009 and prayed for time. Prayer was allowed fixing the matter on 16/10/2009, on which date the engaged counsel for the petitioner again prayed for time and the prayer was allowed fixing the matter on 13/11/2009. On 13/11/2009, the petitioner appeared and filed written

statement. After filing of the written statement, the petitioner remained absent all throughout the proceeding without any steps from 04/02/2010 to 14/05/2012 and in between more than 14 dates had gone by.

3. It was in the aforesaid circumstances, the Tribunal had no other option than to proceed ex-parte against the petitioner and to dispose of the reference vide the impugned judgement dated 14/05/2012. While doing so, the Tribunal examined the Enquiry Officer on behalf of the prosecution who proved his report in which it was stated that during the enquiry, the petitioner could not produce any document to prove his Indian citizenship.

4. Mr. S.S.S. Rahman, learned counsel for the petitioner submits that in view of the available documents to prove the Indian citizenship of the petitioner, he is required to be given an opportunity to prove his Indian citizenship. He submits that it is a fit case for remanding the matter back to the Tribunal for fresh adjudication. Ms. G. Sarma, learned counsel appearing on behalf of Mr. S.C. Keyal, learned ASGI and so also Mr. Noor Mohammad, learned State Counsel submit that the petitioner having been provided with adequate opportunity and he having failed to avail the same and in absence of any grounds assigned towards setting aside the ex-parte order, no interference is called for in respect of the impugned judgement.

5. Although there is no inbuilt provision either in the Foreigners act, 1946 or in the Foreigners Tribunal Order, 1964 but the Full Bench of this Court in the judgement reported in The State of Assam and Others Vs. Moslem Mondal and Others, (2013) 1 GLT 809 held that the Tribunal had jurisdiction to entertain and pass necessary order on an application to set aside an ex-parte opinion. However, the Tribunal can entertain such application provided the proceedee could demonstrate the existence/exceptional circumstances to entertain the same by way of pleadings in the application. For a ready reference, para 92 of the judgement is quoted 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."

6. On a very careful reading of the writ petition, I do not find any ground assigned to set aside the ex-parte order. For a ready reference, the entire writ petition is quoted below:--

"1. That, the petitioner is a law abiding peaceful citizen of India and permanent resident in the district of Golaghat, Assam and as such he is entitled to all the rights and privileges and protections as guaranteed to an Indian citizen under the Constitution of India and all other law s framed thereunder.

2. That the petitioner is a resident of the above mentioned address.

3. That the petitioner has been declared foreign National in case No. FTG.10/2007 by the Foreigners" Tribunal, Golaghat on 14/05/2012.

4. That the petitioner Md. Sahid Ali, S/O Late Akbar Ali, R/O Village- Merapani Fareshtablak, P.S. Merapani, District-Golaghat, Assam is in Jail custody since 2012.

5. That the petitioner begs to state that his grandfather Newaz Ali Mullah"s name was enlisted in the Voter list of 1965 of Samaguri LAC village Khumtai, Mouza- Rongagora, District - Nagaon, Assam voter Sl. No. 366 House No. , 89, Khanda No. 144 is also enlisted in the Voters list of 1970 for 91 Samaguri LAC, village- Khumtai, Mouza- Rongagora, P.S. Samaguri, District- Nagaon, Assam being Sl. No. 345 House No. 89, Khanda No. 33.

6. That the petitioner begs to state that father of the petitioner Akbar Ali"s name was enlisted in the voter list of 1971 for 91 Samaguri LAC village Khumtai, Mouza Rongagora, District - Nagaon, Assam veing Voter Sl. No. 429, House No. 89(A) Khanda-33, and his name is also in the NRC-1971.

7. That he petitioner begs to state that his name is enlisted in the Voters list of 2005 of 95 Golaghat LAC bearing Sl. No. 497, House No. 117 and his name is also enlisted in the voters list of the year 2013 of 95 Golaghat LAC Khanda No. 172 bearing Sl. No. 564, House No. 117. Moreover he was also issue voter ID Card in the year 2013 bearing Sl. No. BVR 1730194.

8. That the petitioner begs to state that a permanent residential certificate w as also issued to the petitioner by the Gaon Burah of Merapani Forest Block, Ward No. 9.

9. That the petitioner begs to state that an Anna Suraksha Yojona Card bearing Sl. No. 1838260 was also issued to the petitioner by the Government of Assam.

10. That the petitioner begs to state that the petitioner is wrongly declared as Foreign National U/S. 2(a) of the Foreigner"s act 1946 and he is in Jail custody.

11. That, in view of the above mentioned facts the petitioner have no other efficacious remedy other than approaching this Hon"ble Court by way of this writ petition.

12. That the petitioner demanded justice and the same has been denied to him

by the respondents.

13. That this petition is filed bonafide and in the interest of justice.

In the premises aforesaid, it is therefore prayed that your Lordships may be pleased to admit this writ petition and issue Rule against the Respondent to show cause as to why the petitioner not been declared Indian national and be released from jail and after hearing the parties be pleased to declare petitioner as Indian National under Indian citizenship Act and also be pleased to order his release from Jail and/or pass any order/order(s) in the instant writ petition as your Lordships may deem fit and proper."

7. Although the learned counsel for the petitioner has submitted that this Court exercising its power of judicial review under Article 226 of the Constitution of India can look into the documents submitted by the petitioner to prove his Indian citizenship, the same is not acceptable inasmuch as this Court exercising writ jurisdiction cannot make a roving enquiry to find out as to whether the petitioner is an Indian citizen or not. Moreover, the issue involved in the writ petition is as to whether the impugned ex-parte order is valid in the eye of law or not.

8. In the aforesaid Full Bench decision, answering the issue as to what is the scope of interference with the Tribunal's order in the writ proceeding, it has been observed thus:--

"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*, (2010) 11 JT 273 : (2010) 11 SCALE 27 : (2010) 13 SCC 336 : (2010) 9 UJ 4781 : (2011) AIRSCW 31 : (2010) AIRSCW 7184 : (2010) 6 Supreme 795 , 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."

9. Mr. Rahman, learned counsel for the petitioner has submitted that even if the impugned judgement of the Tribunal is upheld, no useful purpose will be served, inasmuch as, it is impossible to deport the foreigners. He submits that such a submission has been made from his personal experience. Even if the submission so made by the learned counsel for the petitioner is accepted that cannot be a ground to interfere with the impugned judgement.

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

11. Registry shall send down the case records to the learned court below along with a copy of this judgement and order.

12. The petitioner is said to be in detention camp after passing the impugned judgement. The respondents shall now take necessary follow up action.