
(2009) 12 GAU CK 0024
In the Gauhati High Court
Case No : Writ Petition (C) No. 4411 of 2009

Sajiran Nessa @ Sajiran Khatun	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 22-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 15
Foreigners Act, 1946 — Section 9

Citation : (2010) 2 GLD 129

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : S. Alim, for the Appellant; R. Chakraborty, Addl. Sr. Govt. Advocate and S. Chakraborty, CGSC, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The petitioner, who claims to be an Indian citizen, by birth, is aggrieved by the judgment and order dated 31.10.2007 passed by the Foreigners Tribunal (III) Barpeta in FT case No. 22(III) of 2007, declaring her to be a foreigner (Bangladeshi national) who entered into Assam after 25.3.1971.

2. I have heard Mr. S. Alim, learned Counsel for the petitioner as well as Ms. R. Chakraborty, learned Addl. Senior Govt. Advocate, Assam. I have also heard Mr. S. Chakraborty, learned CGSC.

3. In the writ petition, the petitioner has named her as Sajiran Nessa @ Sajiran Khatun. According to her she was born in village Chakirbhita under PS-Barpeta in the District of Barpeta in the year 1964. She has named her parents as Haidar Ali and Hamela Khatun. Her husband is Hasmat Ali. She claimed that her name appeared in the voter list of 1997.

4. According to the petitioner she never received any notice from the Foreigners Tribunal and thus she was not aware of the proceeding before the Tribunal. It was only on 18.8.2009 she could come to know that there was a proceeding

against her in the Foreigners Tribunal, by way of FT case No. 22(III)/2007.

5. If the petitioner was born in the year 1964, by now, she is aged about 45 years but in the affidavit she has declared her age as 41 years. Either way her name ought to have appeared in many voter lists after she attained the right to vote. She has placed reliance on the 1997 voter list only and nothing else. If she is an Indian citizen, by birth, she could have produced many more documents to establish the same. The Annexure-II certificate does not establish any thing regarding her Indian citizenship, by birth. Likewise, the 1965 voter list on which she has placed reliance also cannot help the case of the petitioner. Even if the names appeared therein i.e. of Haidar Ali and Hamela Khatun are accepted as that of her parents, same by itself will not establish the Indian citizenship of the petitioner. Moreover, there is no explanation as to why their names did not appear in any other voter list. Further, as has been held by the Apex Court in *Bhanwaroo Khan and Others Vs. Union of India (UOI) and Others*, long stay in the country and enrolment in the voter lists would not confer any right on an alien to continue to stay in the country

6. It is on the above basis, the petitioner claims to be an Indian citizen, by birth. Before the Tribunal, she did not appear, as it is her case that she did not receive any notice. I have gone through the records of the Tribunal. The order-sheet reveals that the notice was duly served on the petitioner. Same was recorded in the order dated 24.7.2007. However, the petitioner had chosen not to appear before the Tribunal and consequently the proceeding proceeded ex parte against her. The State duly establish the case as recorded in the impugned judgment and order, upon failure of the petitioner to discharge the burden of proof as envisaged u/s 9 of the Foreigners Act, 1946, the Tribunal has declared her to be a foreigner (illegal Bangladeshi migrant) who entered into Assam after 25.3.1971.

7. The records of the Tribunal have revealed that the case was initially registered as IMDT case No. 1373/2003 and inspite of service of notice, the petitioner remained absent in the proceeding. Therefore/when the case was re-registered in the Foreigners Tribunal after the judgment of the Apex Court in the case of *Sarbananda Sonowal Vs. Union of India (UOI) and Another*, notice was again issued to the petitioner and served. The case of the petitioner came to light when there was intensive revision of Electoral Roll during the period 16th January, 1997 to 15th April, 1997. The draft electoral roll was published on 24.7.1997, wherein the name of the petitioner was appeared as Sajiran Nessa. Upon verification etc. when it was found to be a doubtful case, the Electoral Registration Officer referred the matter to the Superintendent of Police who in turn upon enquiry etc, made the reference to the Tribunal.

8. From the above, it appears that on both the occasions i.e. before the IMDT and so also before the Foreigners Tribunal, the petitioner inspite of service of notice did not appear. On perusal of the records of the Foreigners Tribunal, it appears that notice was received by the daughter Ms. Jaruna Begum. It is not the case of the petitioner that her daughter never intimated her about the notice.

It is also not the case of the petitioner that Ms. Jaruna Begum is not her daughter. As per the provisions of Order V, Rule 15 of the Code of Civil Procedure, service of notice on any other member of the family is sufficient. In the instant case, such service of notice has not been disowned by the petitioner. Her only plea was that no notice was served on her.

9. For all the aforesaid reasons, the writ petition is dismissed upholding the impugned judgment and order dated 31.10.2007 passed in FT case No. 22(III)/07.

10. By order dated 10.11.2009, certain directions were issued to the Superintendent of Police, Barpeta to ensure presence of the petitioner. He is now directed to take the petitioner into custody, if not already in custody and then to detain her in jail/detention camp till such time deported/pushed back to Bangladesh. Direction is also issued to the Deputy Commissioner, Barpeta to ensure deletion of the name of the petitioner from the voter list, if any.

11. Let the compliance report be furnished by the Superintendent of Police and the Deputy Commissioner, Barpeta, for perusal of which, the Registry shall list the matter again on 29.1.2009.

12. Let copies of this judgment and order be sent to the Union of India in the Home Ministry as well as to the Superintendent of Police and the Deputy Commissioner, Barpeta. Further a copy of this order be furnished to Ms. R. Chakraborty, learned Addl. Senior Govt. Advocate, for her necessary follow up.

13. Let the LCR be sent down immediately alongwith a copy of this judgment and order.