
(2009) 12 GAU CK 0066
In the Gauhati High Court
Case No : Writ Petition (C) No. 4478 of 2009

Salam Dewan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-12-2009

Acts Referred:

Citation : (2010) 1 GLD 839

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

Bench : Single Bench

Judgement

B.K. Sharma, J.—This writ petition is directed against the judgment and order dated 20.12.2008, passed by the Foreigners Tribunal (II), Barpeta in FT (2nd Tribunal) case No. 429/2006 declaring the petitioner to be a foreigner (Bangaldeshi national) illegally entering into Assam after the cut-off-date i.e. 25.3.1971.

2. I have heard Mr. A.S. Choudhury, learned senior counsel assisted by Mr. M.H. Ahmed, learned Counsel appearing for the petitioner as well as Mr. H. Rahman, learned Standing Counsel, Union of India in the Home Ministry. I have also heard Ms. R. Chakraborty, learned Addl. Senior Govt. Advocate, Assam. I have also examined the records of the Tribunal.

3. The impugned judgment and order is ex parte as the petitioner did not respond to the proceeding before the Tribunal in spite of service of notice. The Tribunal on the basis of the materials on record has declared the petitioner to be a foreign national (Bangladeshi national) entering into Assam without any valid document, after the cut-off-date which is 25.3.1971. As per the evidence adduced by the State, during enquiry, which was conducted on 21.9.1997, the petitioner failed to furnish any relevant document in support of his Indian citizenship. The enquiry was conducted as per the direction of the Electoral Registration Officer for 47 No. Chenga Legislative Assembly Constituency. The report furnished by the Enquiry Officer was exhibited as Ext. 1. The Tribunal also perused the report furnished by the Local Verification Officer (LVO), who also

conducted the enquiry. During enquiry, the petitioner failed to submit any relevant document.

4. As per Clause 9 of the Foreigners Act, 1946, burden of proof is on the suspected foreign national to establish that he is an Indian citizen. The petitioner having failed to discharge the said burden by adducing any evidence, the Tribunal had no other option than to declare the petitioner to be a foreign national.

5. In the writ petition, the case of the petitioner is that he being a permanent resident of the address furnished in the writ petition is entitled to all the rights, privileges and protection available to a citizen of India and guaranteed by the Constitution of India. Such a statement had been made in paragraph 1 of the writ petition. Thus, the claim of the petitioner that he is an Indian citizen is on the basis of the purported permanent residentship in the particular address and not because he is an Indian citizen, by birth, or having entered into Assam before the cut-off-date. However, in paragraph 3 of the writ petition, the petitioner has stated that he was born and brought up in village Balartari under PS Tarabari in the District of Barpeta and that his father is late Moyser Dewan @ Maisur Kha, son of Late Kasimuddin Dewan. According to the petitioner, his date of birth was not recorded in the Registration Office, as his parents as well as grand parents were illiterate. It is the case of the petitioner that he was born some time in 1962 but his age in the Electoral Roll of 1985 was wrongly recorded as 27 years, which in fact, ought to have been 23 years.

6. In support of the aforesaid claim the petitioner has annexed Annexure-2 document dated 22.11.1984, which in fact is format of declaration made by one Abdus Samad on 22.11.1984. In the said declaration, name of Md. Moyser Dewan, Miss Faltan Nessa and Md. Salam Uddin appeared, recording their respective age as 72, 55 and 22 years. The petitioner identifies himself as Md. Salam Uddin, without however, any disclosure in the writ petition that he is also known as Salam Uddin.

7. In paragraph 4 of the writ petition, the petitioner has named his wife and their four children. In paragraph 5, it is his stand that he is also known as Salam Uddin, Abdus Salam Dewan and Abdus Salam Uddin. Thus, if we go by the statements, the petitioner has four names.

8. The aforesaid declaration (Annexure-2) is for the purpose of incorporation of names in the voter list and thus cannot help the case of the petitioner. The petitioner has also placed reliance on certain land revenue receipts (Annexure 3, 4 and 5) so as to claim that the persons named in the said documents are his ancestors. Even if the same is believed to so, same cannot help the case of the petitioner as the said revenue receipts cannot establish the case of the petitioner that he is an Indian citizen, by birth.

9. The petitioner claims that in the year 1990, his house in the particular place was eroded by river Brahmaputra because of which his father shifted to Village

Malipara under PS Tarabari. It is the further case of the petitioner that his father and mother died in the year 1990 and 1994 respectively. The petitioner has placed reliance on the Annexure-6 voter lists of 1966 and 1970, so as to claim that his father's name appeared in the said voter lists as Maiser Kha. According to the petitioner, the names appearing in the 1970 voter list are that of his grandmother and uncle. Such voter lists of 1966 and 1970 containing some names cannot help the case of the petitioner unless it is established that he was in India (Assam) with his alleged ancestors.

10. The real claim of the petitioner is on the basis of the voter list of 1985 in which the name of Salam Uddin appears which the petitioner claims to be his name. The petitioner has also placed reliance on Annexure-9 series certificates issued by the Gaonbharas of village Balartari and Malipara certifying that Salam Dewan is the son of late Maiser Kha and that his name was enrolled in the 1985 and 1994 voter lists. Such documents cannot make the petitioner an Indian citizen, that too by birth.

11. As per the declaration made in the writ petition, the petitioner at the time of filing the writ petition, was 47 years of age. If that be so, it is not understood as to why his name does not appear in any other document including the voter lists over the period except 1985. 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. If the petitioner is an Indian citizen, by birth, he ought to have produced valid proof of that and merely by producing the voter list of 1966 and 1970, claiming that the names containing therein are that of his ancestors, he cannot claim to be an Indian citizen, by birth. That by itself will not establish that the petitioner was born and brought up in India and that he all along stayed in India. It is known to all that it is a common feature that part of a family remains in Bangladesh and the other part remains in Assam. Further, there is no explanation as to why the names of his alleged ancestors did not appear in any other voter list except 1966 and 1970. As stated in paragraph 7 of the writ petition, his father and mother died in 1990 and 1994 respectively. If we believe the self-declaration of 1984 (Annexure-2), his father and mother were 72 and 55 years of age respectively. If that be so, their names would have appeared in many voter list periodically published, but there is none.

12. As regards the ex parte proceeding before the Tribunal, the case of the petitioner is that firstly the proceeding was before the IMDT, Barpeta as per the provisions of IMDT Act, 1983. He appeared in the said proceeding through an advocate and prayed for time to file written statement. According to the petitioner he had shown to the Tribunal that his father's name is Maiser Dewan but in the notice, same was wrongly shown as Khalek.

13. After scrapping of the IMDT Act, the proceeding restarted before the Foreigners Tribunal, Barpeta, from which also the petitioner was served with notice, naming his father as Khalek. According to the petitioner, it was a bona

fide mistake on his part to have accepted the notice as his father was wrongly described. It is the plea of the petitioner that since he ought not to have accepted the notice, he did not appear before the Tribunal. His further case is that some of the villagers also advised him not to appear before the Tribunal. Now, the petitioner has approached this Court by filing the instant writ petition on the aforesaid grounds.

14. I have verified the records of the Tribunal, which depicts the name of the petitioner as Abdus Salam Dewan and that of his father as Khalek. On receipt of the notice from the IMDT, the petitioner duly appeared on 7.10.2003 by making an application in which he described himself as Abdus Salam Dewan without any alias and that of his father as late Maiser Dewan without any alias. Along with the said application, he submitted photocopies of voter list of 1966, a hand written certificate dated 7.10.2003 issued by the Gaonbhura of village Balartari and a photocopy of Kachha Khatian of Rayat. In the application, there was no mention as to for what purpose the said documents were furnished. Only statement made was that necessary documents had been furnished. As per the handwritten certificate dated 7.10.2003, late Maiser Kha was a voter and his name appeared in 1966 voter list.

15. After the aforesaid appearance before the Tribunal, the petitioner all along remained absent in the Tribunal in all the dates fixed thereafter. Be it stated here that as many as 16 dates passed by. However, the petitioner reappeared on 8.7.2005 with a prayer petition to file written statement and the same was allowed fixing the matter on 17.8.2005. However, no such written statement was filed.

16. In the mean time, pursuant to the judgment of the Apex Court in Sarbananda Sonowal Vs. Union of India (UOI) and Another, by which the IMDT Act was scrapped, the case was re- registered in the Foreigners Tribunal. Although, notice was duly served, the petitioner did not respond to the proceeding. In the notice, the petitioner was described as Abdus Salam Dewan S/o Khalek. The petitioner also received notice in that name. However, the petitioner inspite of such service of notice remained absent in the proceeding before the Tribunal. After service of notice, the case was fixed on several dates numbering 19 (nineteen). Thus, the Tribunal had no other option than to proceed ex parte and eventually passed the impugned judgment.

17. The ground, which the petitioner has urged for non- appearance before the Tribunal, is not at all acceptable. If the petitioner had received notice, which according to him described his father wrongly, it was incumbent on his part to appear before the Tribunal and to apprise the same. Even if his father's name was wrongly described, same by itself cannot invalidate the proceeding before the Tribunal. The documents on which the petitioner placed reliance before the Tribunal have been discussed above. Same cannot establish his Indian citizenship and that too, by birth.

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

19. 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 him 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.

20. 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.

21. 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.

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